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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1904.~~ 1905.

No. ~~254.~~ 24.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, APPELLANT,

vs.

THE INTERSTATE COMMERCE COMMISSION.

FILED MAY 13, 1904.

No. ~~260.~~ 27.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY AND THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

FILED MAY 16, 1904.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

(19347 AND 19358)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 254.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, APPELLANT,

vs.

THE INTERSTATE COMMERCE COMMISSION.

FILED MAY 13, 1904.

No. 260.

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vs.

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FILED MAY 16, 1904.

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a TRANSCRIPT OF RECORD.

UNITED STATES OF AMERICA,
Western District of Virginia, ss:

Pleas in the circuit court of the United States of the western district of Virginia, at Lynchburg, before the honorable Henry C. McDowell, judge of the district court of said district, on Monday, the 14th day of March, anno Domini 1904, and in the 178th year of the Independence of the United States.

INTERSTATE COMMERCE COMMISSION
versus
THE CHESAPEAKE AND OHIO RAILWAY COMPANY and the New York, New Haven and Hartford Railroad Company. } In equity.

Be it remembered that heretofore, to wit, on the 13th day of July, 1903, in the clerk's office of the said circuit court of the United States, came the said Interstate Commerce Commission and Thomas Lee Moore, esq., United States district attorney for the western
b district of Virginia, pursuant to the direction of the honorable Philander C. Knox, Attorney-General of the United States, and filed his petition against the Chesapeake and Ohio Railway Company and the New York, New Haven and Hartford Railroad Company, which petition is in the words and figures following, to wit:

IN THE

Circuit Court of the United States

IN AND FOR THE WESTERN DISTRICT OF VIRGINIA.

INTERSTATE COMMERCE COMMISSION

v.

THE CHESAPEAKE & OHIO RAILWAY COMPANY AND THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.

IN EQUITY.

To the Judges of the Circuit Court of the United States for the Western District of Virginia:

Now comes the Interstate Commerce Commission, represented by Thomas Lee Moore, Esq., United States District Attorney for the Western District of Virginia, pursuant to the direction of the Honorable Philander C. Knox, Attorney-General of the United States, and presents this petition against the Chesapeake & Ohio Railway Company, a corporation and resident of the State of Virginia, and the New York, New Haven & Hartford Railroad Company, a corporation and resident of the State of Connecticut.

And thereupon, your petitioner complains and says:—

That the said Chesapeake & Ohio Railway Company is engaged in carrying freight traffic between the Kanawha District in the State of West Virginia and Newport News in the State of Virginia at less than its published rates on file, and is committing a discrimination forbidden by law, and that said act or acts hereinafter more specifically set forth and herein com-

plained of have been committed and are being committed in part in the Western Judicial District of the State of Virginia, and that such freight traffic is being carried for the New York, New Haven & Hartford Railroad Company as hereinafter more specifically set forth.

Your petitioner further shows that it has reasonable ground for belief that the said Chesapeake & Ohio Railway Company is engaged in the carriage of freight traffic at less than its published rates on file, and is committing a discrimination forbidden by law, as above set forth.

Petitioner states and charges that during the Spring of 1903, the Chesapeake & Ohio Railway Company made a contract to carry a large amount of coal, to-wit: sixty thousand (60,000) tons, from the Kanawha District of West Virginia to Tidewater at Newport News, in the State of Virginia, for shipment to New Haven for the New York, New Haven & Hartford Railroad Company, for which said traffic the Chesapeake & Ohio Railway Company would realize for carrying the same from twenty ($.20) to sixty ($.60) cents per ton. At least, petitioner is informed and believes that the rate the Chesapeake & Ohio Railway Company will receive on this traffic, or is receiving on the same, is far below $1.45 per ton, its published rate for carrying coal from the Kanawha District of West Virginia to Tidewater, at Newport News, Virginia, for shipment beyond the capes of the Chesapeake.

Petitioner further states that it is informed and believes that the Chesapeake & Ohio Railway Company is now engaged in carrying the 60,000 tons of coal aforesaid, and that out of that amount it has already carried and delivered, at least 25,000 tons, at a rate far below its published rate aforesaid.

Petitioner further says that it is informed and believes that the Chesapeake & Ohio Railway Company undertakes to justify its action in the premises on the ground that in 1896 a contract was made by the Chesapeake & Ohio Railway Company with the New York, New Haven & Hartford Railroad Company, by which the former sold and agreed to deliver to the latter two millions of tons of best quality of coal, on or before the 1st day

of July, 1902, delivery to begin July 1st, 1897 and not to exceed 400,000 tons per annum. The price to be paid by the New York, New Haven & Hartford Railroad Company to the Chesapeake & Ohio Railway Company for this coal was Two dollars and seventy-five cents ($2.75) per ton, on the New Haven basis.

Petitioner says that it is informed and believes that during the life of this contract, up to and including the month of June, 1902, (after which time deliveries ceased) the Chesapeake & Ohio Railway Company had failed to deliver about 60,000 tons of coal, required by the contract aforesaid.

Petitioner further says that it is informed and believes that this contract was illegal and void, and that the Chesapeake & Ohio Railway Company had no power to make such a contract, and that the contract for this coal was at such a price that the freight rate thereon to be received by the Chesapeake & Ohio Railway Company during a considerable period covered by the contract, was far below its published rates.

Petitioner further says that it is informed and believes that some months after the contract aforesaid had expired, the New York, New Haven & Hartford Railroad Company rendered a bill to the Chesapeake & Ohio Railway Company for something over One Hundred thousand ($100,000.) dollars, damages for failure to deliver the coal called for by the contract aforesaid, and during the winter of 1902-'03 the President of the Chesapeake & Ohio Railway Company arranged, through a coal broker by name ————Wittenburg, and a coal operator in the Kanawha District by name————Thomas, by which it was agreed that Thomas should ship 60,000 tons of coal from the Kanawha District to the New York, New Haven & Hartford Railroad Company, at $2.75 per ton, said coal to be delivered prior to July 31st, 1903.

Petitioner further states that it is informed and believes that the cost of delivery of this coal per ton at New Haven not including the freight rate to the Chesapeake & Ohio Railway Company from the Kanawha District of West Virginia to Newport News, in Virginia, is as follows:—

COPY.

Contract made between the Chesapeake & Ohio Railway Company and the New York, New Haven & Hartford Railroad Company.

Said Chesapeake & Ohio Railway Company, for the consideration hereinafter mentioned, hereby agrees to furnish to said railroad company not to exceed two million gross tons of bituminous coal from its line in such quantities monthly as wanted from July 1st, 1897, to July 1st, 1902, without charge for demurrage. Deliveries to be made not exceeding four hundred thousand tons per annum.

And said Chesapeake & Ohio Railway Company further agrees that all said bituminous coal shall be of the best quality first class in every respect, and satisfactory to said railroad company and said railway company has the right to terminate this contract at any time if said bituminous coal be of poor quality, or if its deliveries be unnecessarily delayed.

And said Chesapeake & Ohio Railway Company further agrees to deliver all said bituminous coal to said railroad company in its bins at such ports upon its line as required by the monthly requisitions of its purchasing agent.

In consideration of the faithful performance by the said Chesapeake & Ohio Railway Company of all its agreements herein contained, said railroad company agrees to pay for said bituminous coal at the rate of two and seventy-five one hundreths dollars per gross ton New Haven basis, settlement to be made *monthly*.

Said railway company has the right to cancel any and all portions of said quantity of bituminous coal remaining undelivered on July 1st, 1902.

Witness the names of the parties hereto this the 3rd day of December, 1896.

(Sgd) CHESAPEAKE & OHIO RY. CO.
By M. E. Ingalls, President.
(Sgd) THE NEW YORK, NEW HAVEN & HARTFORD
RAILROAD COMPANY,
By C. S. Mellen, 2nd Vice-Prest.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

IN THE MATTER OF THE ALLEGED UNLAWFUL RATES CHARGED BY THE CHESAPEAKE & OHIO RAILWAY COMPANY FOR THE TRANSPORTATION OF COAL SHIPPED FROM WEST VIRGINIA MINES TO NEW HAVEN, CONNECTICUT, AND OTHER POINTS IN NEW ENGLAND.

Hearing at Washington, D. C., July 3, 1903.

Present:

Commissioner Clements.

Appearances:

W. A. Glasgow, for William C. Bullitt;

H. T. Wickham, for The Chesapeake & Ohio Railway Co.

Frank M. Young,
Stenographer.

10:40 A. M., Thursday, July 3rd, 1903.

Commissioner Clements: Gentlemen, this is a matter of inquiry started by the following order:

"July 1, 1903, before the Interstate Commerce Commission, etc.

"On reading and filing the affidavit of W. C. Bullitt, alleging that coal consigned to the New York, New Haven & Hartford Railroad Company from West Virginia mines to New Haven, Connecticut, has been and is being transported by the Chesapeake & Ohio Railway Company for less than its published tariff rates:

"*It is ordered,* That a proceeding of inquiry and investigation into the manner and method in which the said Chesapeake & Ohio Railway Company conducts and manages its business,

particularly in relation to the transportation of coal for the New York, New Haven & Hartford Railroad Company from mines in the State of West Virginia and the rates charged or received for such transportation, be and is hereby instituted; and that said Chesapeake & Ohio Railway Company is hereby made the respondent in said proceeding."

That order is based upon an affidavit which I do not know whether you have seen yet or not. Will you read it, Mr. Glasgow?

Mr. Glasgow (reading):

"City of Washington, District of Columbia. } ss.

"This day personally appeared before the undersigned, Martin S. Decker, Notary Public for the City of Washington and District aforesaid, William C. Bullitt, and being by me duly sworn deposed and saith:

"First. That he is engaged in the business of selling coal and that his place of business is the Arcade Building, Philadelphia, Pennsylvania.

"Second. That he has been offered coal in the Kanawha District on the line of the Chesapeake & Ohio Railway Company in the State of West Virginia at a price which is very attractive to him, and which he wishes to purchase; and desiring to remove the same to Newport News for shipment beyond the capes of the Chesapeake, he applied to the Chesapeake & Ohio Railway Company for a freight rate on coal from the said Kanawha District of West Virginia to Newport News, which said coal was to be shipped beyond the capes of the Chesapeake.

"To his application for rates, as aforesaid, the Chesapeake & Ohio Railway Company replied that the rate on coal from the Kanawha District to tidewater, for shipment beyond the capes, is one dollar and forty-five cents ($1.45) per ton, which freight rate has prevented complainant from purchasing the coal offered to him as aforesaid in the Kanawha District of West Virginia, as under this rate he could not afford to move the same at present.

"Affiant further saith that he is informed and believes that during the spring of 1903 the Chesapeake & Ohio Railway Company made a contract to carry a large amount of coal, to wit, sixty thousand (60,000) tons, from the Kanawha District of West Virginia to tidewater, for shipment to New Haven, for the New York, New Haven & Hartford Railroad Company, from which said traffic the Chesapeake & Ohio Railway Company will realize for carrying the same from twenty ($.20) to sixty ($.60) cents per ton; at least affiant is informed and believes that the rate the Chesapeake & Ohio Railway Company will receive on this traffic is far below the published rate of $1.45 above set forth.

"Affiant further states that he is informed and believes that the Chesapeake & Ohio Railway Company is now engaged in carrying the sixty thousand (60,000) tons of coal aforesaid, and that out of that amount it has already carried and delivered at least twenty-five thousand (25,000) tons, at a rate far below its published rate aforesaid.

"Affiant further says that he is informed and believes that the Chesapeake & Ohio Railway Company undertakes to justify this course on the ground that in 1896 a contract was made by the Chesapeake & Ohio Railway Company with the New York, New Haven & Hartford Railroad Company by which the former sold and agreed to deliver to the latter two millions (2,000,000) of tons of best quality of coal on or before the 1st day of July, 1902, delivery to begin July 1, 1897, and not to exceed four hundred thousand (400,000) tons per annum. The price to be paid by the New York, New Haven & Hartford Railroad Company to the Chesapeake & Ohio Railway Company for this coal was two dollars and seventy-five cents ($2.75) per ton on the New Haven basis.

"Affiant says that he is informed and believes that during the life of this contract up to and including the month of June, 1902 (after which time deliveries ceased), the Chesapeake & Ohio Railway Company had failed to deliver about sixty thousand (60,000) tons of coal required by the contract aforesaid.

"Affiant further says that he is informed and believes that this contract was illegal and void and that the Chesapeake & Ohio Railway Company had no power to make such a contract; and affiant verily believes that the contract for this coal was at such a price that the freight rate thereon to be received by the Chesapeake & Ohio Railway Company was far below its published rates.

"Affiant further says that he is informed and believes that some months after the contract aforesaid had expired the New York, New Haven & Hartford Railroad Company rendered a bill to the Chesapeake & Ohio Railway Company for something over one hundred thousand ($100,000) dollars, damages for failure to deliver the coal called for by the contract aforesaid; and during the winter of 1902-1903 the President of the Chesapeake & Ohio Railway Company arranged a new contract between the New York, New Haven & Hartford Railroad Company, through a coal broker, by name Wittenburg, and a coal operator in the Kanawha District, by the name of Thomas, by which it was agreed that Thomas should ship sixty thousand (60,000) tons of coal from the Kanawha District to the New York, New Haven & Hartford Railroad Company, at $2.75 per ton, said coal to be delivered prior to July 31, 1903.

"Affiant further states that he is informed and believes that the cost of delivery of this coal per ton to New Haven, not including the freight rate to the Chesapeake & Ohio Railway Company from the Kanawha District to Newport News, is as follows:

By paid to Thomas, per ton	$1.28
Commission to broker	.05
Ocean rates	about 1.00
Discharging	.19
Total	$2.52

"So that the Chesapeake & Ohio Railway Company realizes from this traffic about twenty-three ($.23) cents per ton for carrying coal from the Kanawha District to Newport News for

shipment beyond the capes of the Chesapeake, and the published tariff of the Chesapeake & Ohio Railway Company for like coal from the same District to the same destination is one dollar and forty-five ($1.45) cents per ton.

"Affiant is informed and believes that the Chesapeake & Ohio Railway Company claims that by this arrangement it is paying off a claim against it asserted by the New York, New Haven & Hartford Railroad Company; but affiant is informed and believes that the said claim against the Chesapeake & Ohio Railway Company is not a valid, legal demand, and that the delivery of this coal to the New York, New Haven & Hartford Railroad Company at the rate to be received by the Chesapeake & Ohio Railway Company is a discrimination against all the other coal produced in the Kanawha District, and prevents affiant from moving the coal in the Kanawha District which has been offered to him as aforesaid.

WILLIAM C. BULLITT.

"Subscribed and sworn to before me this 30th day of June, 1903.

L. S.

MARTIN S. DECKER.
Notary Public."

Commissioner Clements: This, as you see by the nature of the affidavit, is a proceeding under the Twelfth Section of the Act to regulate commerce and its general provisions, under which the Commission is charged with the duties of enforcing this law; and it had this matter brought to its attention by this affidavit. We thought the most appropriate proceeding would be to get some one familiar with the facts representing the railroad to tell us about it, and for that reason we proceeded in rather an informal way by telegram to ask Mr. Stevens, or someone that knew about it, to come here, rather than issue a subpoena. We are glad to have you here. We thought that was the most direct way to get at the facts of the matter and see whether it appeared to be a violation of the law or not. Mr. Stevens, you will please be sworn.

Mr. G. W. Stevens, President of the Chesapeake & Ohio Railway Company, after being duly sworn according to law, testified as follows:

Commissioner Clements: Now, you have heard that affidavit read, Mr. Stevens. Have you a general familiarity with this question?

Mr. Stevens: Yes, sir.

Commissioner Clements: Suppose you just take it and tell us about it from beginning to end without any interrogatories, at least for the present, and then Mr. Glasgow can ask any questions he sees proper, unless you (Mr. Glasgow) prefer to conduct the examination now.

Mr. Glasgow: No, sir.

Commissioner Clements: Mr. Glasgow, you might read the affidavit again, and Mr. Stevens can answer each paragraph separately.

Mr. Glasgow (reading from affidavit): "Second. That he has been offered coal in the Kanawha District on the line of the Chesapeake & Ohio Railway Company in the State of West Virginia at a price which is very attractive to him, and which he wishes to purchase; and desiring to remove the same to Newport News for shipment beyond the capes of the Chesapeake, he applied to the Chesapeake & Ohio Railway Company for a freight rate on coal from the said Kanawha District of West Virginia to Newport News, which said coal was to be shipped beyond the capes of the Chesapeake.

"To his application for rates, as aforesaid, the Chesapeake & Ohio Railway Company replied that the rate on coal from the Kanawha District to tidewater, for shipment beyond the capes, is one dollar and forty-five cents ($1.45) per ton, which freight rate has prevented complainant from purchasing the coal offered to him as aforesaid in the Kanawha District of West Virginia, as under this rate he could not afford to move the same at present."

Mr. Stevens: Such application was made to our Freight Traffic Manager, and he replied in effect the same as stated here,

that our rate was the one that was filed with the Interstate Commerce Commission, and the only one we had on the business.

Commissioner Clements: That is $1.45, is it?

Mr. Stevens: Yes, sir.

Mr. Glasgow (continuing reading from affidavit): "Affiant further saith that he is informed and believes that during the spring of 1903 the Chesapeake & Ohio Railway Company made a contract to carry a large amount of coal, to wit, sixty thousand (60,000) tons, from the Kanawha District of West Virginia to tidewater, for shipment to New Haven, for the New York, New Haven & Hartford Railroad Company, from which said traffic the Chesapeake & Ohio Railway Company will realize for carrying the same from twenty ($.20) to sixty ($.60) cents per ton; at least affiant is informed and believes that the rate the Chesapeake & Ohio Railway Company will receive on this traffic is far below the published rate of $1.45 above set forth."

Mr. Stevens: Such a contract was made to deliver 60,000 tons of coal, which was due on this five-year contract, and which coal would have been delivered last June had not the coal miners' strike interfered. At the time the coal miners' strike was inaugurated, we were within 60,000 tons of filling the five-year contract, which expired July 1, 1902. Of course, during that and the subsequent period,—well, in fact, during the next eight or ten months,—the price of coal was so high that it was impossible to get it, and this condition——

Commissioner Clements: You mean after the strike began?

Mr. Stevens: Yes, sir.

Mr. Stevens (continuing) continued through the winter. The railway company realized that it had an obligation to perform, and it made the very best arrangement it could to carry out that obligation, without any idea of violating the law in any particular. The fact is that the full rate of $1.45 is charged on this coal and collected from the consignee; but, of course, the company subsequently must make good the loss as between the cost of the coal delivered at New Haven—charging the full freight rate—and the price the contract calls for. It was simply a ques-

tion paying an exorbitant claim, or paying it part in coal and part in money.

Commissioner Clements: Mr. Glasgow, do you want to ask anything on that paragraph?

Mr. Glasgow: Yes, sir.

Mr. Glasgow: Mr. Stevens, you say that the company realized that it had an obligation to perform. You mean with regard to the contract which was made between the Chesapeake & Ohio Railway Company and the New York, New Haven & Hartford Railroad Company in 1896?

Mr. Stevens: Yes, sir.

Mr. Glasgow: That contract was for the delivery of 2,000,000 tons of coal at $2.75 per ton at New Haven?

Mr. Stevens: Yes, sir.

Mr. Glasgow: Whom was that contract made by, Mr. Stevens?

Mr. Stevens: It was made by the President of the Chesapeake & Ohio Railway Company—Mr. Ingalls— with the New York, New Haven & Hartford Railroad Company.

Mr. Glasgow: It was made by the President of that company for the company?

Mr. Stevens: Yes, sir.

Mr. Glasgow: Where did Mr. Ingalls, or the Chesapeake & Ohio Railway Company, expect to get the 2,000,000 tons of coal provided for by that contract of 1896?

Mr. Stevens: He expected to get it from the parties with whom he made the contract.

Mr. Glasgow: He made a contract with operators along his line, or an operator, whichever it may be, for the furnishing of 2,000,000 tons?

Mr. Stevens: Yes, sir.

Mr. Glasgow: Did he afterwards make a contract with another or any other operators?

Mr. Stevens: Not to my knowledge.

Mr. Glasgow: Were the 2,000,000 tons furnished by the operators or operator with whom he first made the contract?

Mr. Stevens: My understanding is that the operator with

whom the original contract was made transferred his obligation to an association or combination of operators.

Mr. Glasgow: Then, did that association of operators undertake to carry out that contract with the Chesapeake & Ohio Railway Company for the delivery of that coal?

Mr. Stevens: Not at the original price.

Mr. Glasgow: What price did they undertake to carry it out at?

Mr. Stevens: Well, the price varied. There were different prices. I could not state absolutely what price each year, but it was somewhere in the neighborhood of 20 cents a ton more than the original contract.

Mr. Glasgow: Was the contract between the Chesapeake & Ohio Railway Company and the operators who were to furnish this coal, or the association of operators, ever attacked as an illegal contract?

Mr. Stevens: No, sir.

Mr. Glasgow: Was there any litigation in the United States court with regard to that?

Mr. Stevens: Not to my knowledge. You will have to ask Mr. Wickham about that.

Mr. Wickham: Not to my knowledge; no, sir.

Mr. Glasgow: I thought there was some question raised about it by some stockholder. Does that refer to that matter at Charleston?

Mr. Wickham: So far as I know, I believe that had no reference to this contract.

Mr. Glasgow: $2.75 was the price of the coal at New Haven under the contract of 1896?

Mr. Stevens: Yes, sir.

Mr. Glasgow: Do you recall what the price was that the Chesapeake & Ohio Railway Company agreed to pay to the operator who was to furnish this coal?

Mr. Stevens: I understood it was 70 cents.

Mr. Glasgow: Do you recall what your published rate at that time on coal was from that District to tidewater?

Mr. Stevens: My recollection is that it was $1.15.

Mr. Glasgow: Do you know what the ocean rates were?

Mr. Stevens: They varied; no settled rate.

Mr. Glasgow: In the neighborhood of a dollar?

Mr. Stevens: Very much less than that at that time.

Mr. Glasgow: Well, what do you think?

Mr. Stevens: I should say not to exceed 60 to 75 cents.

Mr. Glasgow: What is the cost of discharging?

Mr. Stevens: 19 cents. I am under the impression that there was a contract with a certain water transportation company at a price of about 60 cents.

Mr. Wickham: I think there was, but I do not know anything about it.

Mr. Stevens: We have no knowledge of that.

Commissioner Clements: That would take it to where—New Haven?

Mr. Glasgow: The rate of the Chesapeake & Ohio to tidewater, the published rate, at that time was $1.15?

Mr. Stevens: Yes, sir; from the New River District.

Mr. Glasgow: The ocean rates were from 60 to 75 cents?

Mr. Stevens: You may say 75 cents.

Mr. Glasgow: And the cost of discharging 19 cents?

Mr. Stevens: That was about the figure.

Mr. Glasgow: Under the present arrangements, after that contract expired, you pay—Mr. Thomas supplies the coal does he not—for the New Haven coal under this contract?

Mr. Stevens: The Kanawha Fuel Company, of which he is the President.

Mr. Glasgow: Could you recall what he is paid for the coal at his mine?

Mr. Stevens: Your figures are approximately correct.

Mr. Glasgow: The figures in this affidavit?

Mr. Stevens: Yes, sir.

Commissioner Clements: Are the other figures correct? I believe you have already answered in regard to this freight rate.

Mr. Stevens: Approximately, excepting his figure stating

from 60 to 75 cents, because we are collecting $1.45 on that coal.

Mr. Glasgow: Has any of that been collected?

Mr. Stevens: The bills have been rendered, but I am not positive that they have been paid. The bills have been rendered at the full tariff.

Mr. Glasgow: Who would arrange this—the difference between the amount and the excess?

Mr. Stevens: Well, that would be a subsequent adjustment, after the coal is delivered.

Mr. Glasgow: Adjustment with whom?

Mr. Stevens: I should say with the New York, New Haven & Hartford Railroad Company; possibly with the agency that we made the arrangement with; at any rate, we must put that coal to the New Haven Road at $2.75. They can pay whatever it costs, including the freight rate, but we must make good to them in cash the difference—to the New Haven Road—if we follow out the obligation of the contract, which we are endeavoring to do.

Mr. Glasgow: Has any of that been paid by the New York, New Haven & Hartford Railroad Company for freight?

Mr. Stevens: Not yet. I do not know whether they have paid the freight or not. I cannot tell as to that. The bill has been rendered in due course, in the proper way.

Mr. Glasgow: Why is Mr. Wittenburg in evidence in this arrangement, Mr. Stevens?

Mr. Stevens: I simply employed Mr. Wittenburg, who handles it without compensation, to manage the movement of the coal from tidewater to New Haven, arranging for vessels, etc., as he had facilities in that direction which I did not possess.

Mr. Glasgow: He is paid a commission of 5 cents or 10 cents?

Mr. Stevens: No sir; he is not paid any commission. He voluntarily offered to handle it for us without pay.

Commissioner Clements: I do not understand whether you agree or not about this, or whether I understand it correctly. The price of coal is—have you testified?

Mr. Stevens: The price, according to the contract, was $2.75

delivered at New Haven. This contract expired July 1, 1902. We were making very strenuous efforts to wind it up by that date, but unfortunately the coal miners' strike came on us the first week in June, which debarred us from cleaning up the arrangement.

Commissioner Clements: You were through except by about 60,000 tons?

Mr. Stevens: Yes sir. We would not have been over 20,000 tons short at the beginning of July, '02, had not the coal miners' strike intervened, and nothing would ever been heard of the matter. But, unfortunately for us, the strike did occur.

Commissioner Clements: Now, the price was $2.75 per ton, and the rate was $1.15?

Mr. Glasgow: Under the old contract?

Commissioner Clements: Yes, sir.

Mr. Stevens: You can figure it out that the Company was giving its full tariff, and about 60 cents water rate; that would make it about $1.49, and they got, I should say $1.26 freight—more than the published tariff. Your water freight could vary from 60 to 70 cents and still be within the rate as published.

Mr. Glasgow: Mr. Stevens, was your published rate from July 1, 1897, to June 30, 1902, $1.15 from the New River District to Tidewater?

Mr. Stevens: I can only testify as to the rate in effect from February 1, 1900, or April 1, 1900, when the new rates became effective until the present time. The published rates from April 1, 1900, to April 1, 1901, was $1.15 from the New River District and $1.25 from Kanawha. From April 1, 1901, to April 1, 1902, it was $1.25, and $1.35, respectively. Beginning with April 1 this year, it was $1.25.

Mr. Glasgow: From April 1, 1900, to April 1, 1901, it was $1.15?

Mr. Stevens: Yes sir; from the New River District.

Mr. Glasgow: Then, from April 1, 1901, to April 1, 1902, what was it—$1.25?

Mr. Stevens: Yes, sir.

Mr. Glasgow: Then, from April 1, 1902, to July 1, 1902, what was it?

Mr. Stevens: $1.35.

Mr. Glasgow: Now, prior to April 1, 1900, what was it?

Mr. Stevens: I cannot tell. I was not in charge of the traffic at that time.

Mr. Glasgow: You do not know whether it was higher or lower?

Mr. Stevens: I presume it was lower at times. I do not think there was any very stable rate. I left that out because I did not want to testify to something I didn't know anything about.

Mr. Glasgow: Who was the original contract made with?—with the Chesapeake & Ohio Railway Company for the producing of this coal—was the contract made by Mr. Ingalls?

Mr. Stevens: It was made with—you mean with the person—

Mr. Glasgow: I mean with the operator who produced it.

Mr. Stevens: It was made with the.....& Company, the Laurel Creek Coal & Coke Company, and J. L. Berry, who is a land owner.

Mr. Glasgow: Did he decline to carry out that contract that he made?

Mr. Stevens: The contract was transferred to the operators' association.

Mr. Glasgow: What was the price at which he agreed to produce that coal?

Mr. Stevens: 70 cents.

Mr. Glasgow: Did that price continue up to July 1, 1902—70 cents?

Mr. Stevens: No, sir.

Mr. Glasgow: What was the subsequent price charged the Chesapeake & Ohio for that coal?

Mr. Stevens: As I stated formerly, after April 1, 1900, it was about 20 cents more per ton.

Mr. Glasgow: 90 cents? And then after April 1, 1902?

Mr. Stevens: About that; yes sir.

Mr. Glasgow: So that after April 1——

Mr. Stevens: That was on account of their declining to carry out the terms of the contract on account of advance in price of mining, which the contract did not provide for.

Mr. Glasgow: So that after April 1, 1900, the cost of coal was 90 cents at the mines, was it?

Mr. Stevens: About that; yes sir.

Mr. Glasgow: The ocean rates were what? Did they advance then?

Mr. Stevens: I could not tell you.

Mr. Glasgow: Were they less than they had been, more?

Mr. Stevens: I presume they were about that rate. They varied very much, as you know.

Mr. Glasgow: About 60 to 75 cents?

Mr. Stevens: I should say, approximately, that would be correct.

Mr. Glasgow: The cost of discharging was 19 cents?

Mr. Stevens: Yes, sir.

Mr. Glasgow: And your rate was, up to April, 1901, $1.15?

Mr. Stevens: Yes sir. It was $1.15 the first year.

Mr. Glasgow: April 1, 1901, to April 1, 1902, it was $1.25, so that April 1, 1901, to April 1, 1902, the price of the coal which you were furnishing under that contract, according to the estimate you give here, was $2.94—it cost you that at New Haven?

Mr. Stevens: I had not the figures.

Mr. Glasgow: I make that up by this: Coal, 90 cents; ocean rate, 60 cents; discharging, 19 cents; freight rate, $1.25. Now from April 1, 1902, had your rate then increased to $1.35?

Mr. Stevens: No sir. It did not increase until April 1, 1903. I would like to go back over that testimony because there were two years that the rate was $1.25. I desire to make the following statement. April 1, 1901, to 1903, it was $1.25.

Mr. Glasgow: So that from April 1, 1901, to July 1, 1902, the Chesapeake & Ohio Railway Company received on the coal transported under the contract 19 cents a ton less than its published rate, did it not?

Mr. Stevens: Well, according to your figures, it appears that they did not receive the full rate.

Mr. Glasgow: That is all I want to ask on that part of it.

Mr. Wickham: How was that adjusted with the——

Mr. Stevens: That was adjusted by Mr. Orcutt—the coal agency company—who had charge of the matter.

Commissioner Clements: What was the adjustment?

Mr. Stevens: He simply paid over to the railway company what was the net result.

Commissioner Clements: What was left after paying for the coal and transporting it; then what was left out of the $2.75 was paid over to the Chesapeake & Ohio?

Mr. Stevens: Yes, sir.

Commissioner Clements: And, if there was nothing left, there was nothing paid?

Mr. Stevens: Yes sir. But there was a very substantial amount left.

Commissioner Clements: I mean now on these figures?

Mr. Stevens: According to his figures there was a difference of 19 cents between our published tariff and the amount we received, which would mean that we received instead of $1.25, $1.06.

Commissioner Clements: You mean there was always some freight left?

Mr. Stevens: Yes sir; there was very substantial freight left, but it was little less than the tariff as published. I want to say that every agency was familiar with the whole transaction.

Commissioner Clements: What do you mean by that?

Mr. Stevens: What I mean is that Mr. Bullitt and every other coal dealer was aware of that contract, and aware of our situation, and knew that we were not, in that particular matter, receiving our full tariff during that period.

Mr. Wickham: Because of what you considered the obligation of the Chesapeake & Ohio to carry out this contract made by Mr. Ingalls with the New Haven road?

Mr. Stevens: Yes, sir.

Commissioner Clements: We are talking about the original contract?

Mr. Stevens: Yes sir. I do not think that you could properly treat this arrangement for the shipment of 60,000 tons as a new contract; it was simply that the company was fulfilling its obligations, which they insisted upon, and we had to get the coal wherever we could and deliver it to them at the best charge we could.

Mr. Glasgow: When was that made—April, 1903?

Mr. Stevens: Yes, sir.

Mr. Glasgow: The other contract expired July, 1902?

Mr. Stevens: Yes, sir.

Mr. Glasgow: The coal which is delivered under the contract made in April, 1903, is a different kind of coal, is it not?

Mr. Stevens: Yes sir. We could not purchase the New River coal at any price that was at all reasonable; therefore, we had to resort to some other field to purchase the residue and make good our obligation to the New Haven road, which we did at the least pecuniary loss.

Commissioner Clements: You do not regard that as a new contract. I cannot understand what you mean by that. Was there any different written contract made in 1903 to take up the old contract and carry it forward on another basis, in 1903?

Mr. Stevens: Yes sir. In April last, we endeavored to induce the New River operators to fulfill their obligation—it was a moral obligation on their part—on the basis of the old contract, and failing, and realizing that we must produce the coal to the New Haven road, I verbally made this arrangement with the Kanawha Fuel Company to provide the coal.

Commissioner Clements: 60,000 tons?

Mr. Stevens: Yes sir; and made a verbal arrangement with Wittenburg to handle it for us.

Commissioner Clements: What is just the entire substance of that verbal arrangement? Did you have any understanding with the New Haven road?

Mr. Stevens: I first called on the President of the New York,

New Haven & Hartford Railroad Company, and he insisted upon the fulfillment of the obligation. Of course, we had no recourse except to pay a very exorbitant bill that he had rendered, or deliver the residue coal. We chose the latter course as the one producing the least loss to the railway company. We realized it was an unfortunate obligation—one that we would have been glad to escape from, but knowing that we had to either pay his bill, which was something over $100,000, or produce the coal, which would make a loss to us of about $50,000, we chose the latter course. This meant a loss to the company of about $50,000, after collecting their full tariff on the coal. We didn't think that we were in any way violating the law, or we would not have made the arrangement. We thought it was the only course open to fulfill our obligations with the New Haven road. Of course they had an action in law against us if we failed.

Commissioner Clements: Well, then, your verbal arrangement with the coal company was a different concern, different entirely?

Mr. Stevens: Different entirely. The people that we had the original arrangement with repudiated the obligation, and there was no way under the law to compel them.

Commissioner Clements: Why could you not compel them to keep to their contract? You had to keep to yours.

Mr. Stevens: Well, I think the association was not sueable

Commissioner Clements: Was what?

Mr. Stevens: The association that had taken this offer from the original parties; I am under the impression they were not sueable.

Mr. Wickham: I would state that at that time I did not know as to the legal organization of this association of miners. The question as to the right to recover on the original contract was submitted to me, and I was of the opinion that in view of the passage of an act by the General Assembly of West Virginia making it unlawful for railroad companies to buy or sell coal under certain circumstances, suit against them would be waste of time and money.

Commissioner Clements: It was a void contract under the laws of West Virginia.

Mr. Wickham: I was afraid we could get nothing from them. So far as the other contract was concerned, my understanding was that that contract was made between Mr. Ingalls and a representative of the New York, New Haven & Hartford Railroad Company in New York—

Mr. Stevens: The Vice-President of the New Haven road in New York, Mr. Mullen.

Mr. Wickham (continuing): to be performed in Connecticut or Massachusetts, under certain circumstances. There was enough doubt in my mind upon that proposition to make me doubtful about the wisdom of pleading *ultra vires* in the event of a suit by the New Haven road against the Chesapeake & Ohio Railroad Company. My doubt upon this question arose largely from this: That the Chesapeake & Ohio Railway Company primarily is a citizen of the State of Virginia, where its original charter was granted; it is also incorporated under the laws of West Virginia; but the parent company, the principal company, is a Virginia corporation. The Act of West Virginia had no extra territorial effect, so far as the Virginia corporation was concerned, or so far as the State of New York, where the contract was made, or Connecticut, where it was to be fulfilled, was concerned. Furthermore, West Virginia expressly excepted from the inhibition of the law a large number of railroads doing business in West Virginia, which claimed to have by their charters, the expressed privilege of buying and selling coal. It was intrinsically unjust, an injustice occasioned by the power of certain political leaders who exercised sufficient influence, resulting in the preferential benefit of their companies. So far as the Virginia law was concerned, while the charter of the Chesapeake & Ohio Railroad Company did not in expressed terms permit it to buy and sell articles of transportation, yet the statutes of that state in expressed terms permitted the railway company to foster business along its lines in various ways. That policy has been continued for a great number of years in Virginia. There was

enough in the question to make me hesitate about pleading *ultra vires*. It is a plea that carries, as it were, some kind of opprobrium with it, and had *ultra vires* been pleaded the New England market for the coal operators along the line of the Chesapeake & Ohio Railroad Company would I believe have been at once closed against us for all time. There was very grave doubt as to the validity of the contract. As a matter of law, strictly, the contract may be an *ultra vires* contract, but I deemed that upon a question involving so much, that it was within the privilege of the Chesapeake & Ohio Railway Company to say whether or not it would plead *ultra vires*, a transaction involving the business of the road, and which, I believe, would have destroyed the market of the mine operators.

Mr. Glasgow: May I interrupt you?

Mr. Wickham: Certainly.

Mr. Glasgow: The position which from my standpoint is a correct one, is that the question of *ultra vires* as to this contract is not of so much importance in determining its validity as is the fact, according to my views—while the Chesapeake & Ohio may, or may not, have the right—that the contract was prohibited by law on the ground of public policy.

Commissioner Clements: What do you mean, what law do you mean?

Mr. Glasgow: I mean that by the act to regulate commerce the Chesapeake & Ohio could not get out of this—

Commissioner Clements: You do not have reference to the laws of West Virginia?

Mr. Glasgow: No sir. It strikes me that the contract, regardless of the question of the West Virginia statute was made by the Chesapeake & Ohio, and was agreed upon; and very certainly from April 1, 1901, to July 1, 1902, the amount they realized for traffic was below the published rate, and, therefore, was discrimination against every other shipper from that district.

Mr. Wickham: We did not consider it was discrimination.

Mr. Stevens: I want to make the point that when the con-

tract was made in 1896, to take effect the first of July, 1897, the railroad was receiving its full tariff on the figures on which the contract was based. The cost of the coal and the vessel rates at that period did make a very handsome freight rate. The only trouble was that the contract was made to carry for five years, during which period conditions changed entirely. The miners were advanced in pay. Everything went up in proportion. What was a profitable contract at the time it was made, and paid a handsome freight rate, of course made a lower freight rate in 1902.

Mr. Glasgow: Did you state when you made the contract it was an unprofitable one?

Mr. Stevens: I said that from April 1, 1901,—I am not certain as to prior to 1900—certainly from April 1, 1901, to the end of this contract the Chesapeake & Ohio did not realize its published rate.

Mr. Glasgow: The reason for that you say was that it was a five years' contract?

Mr. Stevens: And conditions changed entirely.

Mr. Glasgow: I do not understand the law that a railroad company can make a contract for five years, raise its rates, and justify it by reason of the continuance of the contract.

Mr. Stevens: Is it not a fact that every other railroad that was carrying coal was doing the same thing?

Mr. Glasgow: I do not know.

Mr. Wickham: We submit that the Chesapeake & Ohio got its full freight rate because it paid off this claim to the New Haven road, which would otherwise had to have been paid in money. It is purely a question of bookkeeping, as I understand it.

Commissioner Clements: You mean this claim of $100,000 or more?

Mr. Wickham: Yes sir.

Mr. Glasgow: My reply to that is that you cannot pay a debt by a diminution of your freight rate.

Mr. Wickham: My reply is that if by a device, if it is a *boni fida* transaction, it may be *ultra vires*, but if it be not a device to evade your tariff you can pay a claim in that way.

Mr. Glasgow: Then we have got a clear-cut proposition between us.

Mr. Stevens: There is no company that is doing business that has been a more faithful adherent to its published tariff rates since February, 1900, than the Chesapeake & Ohio, and there has not been one rate made that has not been published with you gentlemen and adhered to; and if we made a reduced rate, we gave you the proper notice. I will challenge anybody to prove that we have made a rate in the last three years that we did not publish with the Commission and did not adhere to.

Mr. Glasgow: I want to say right here that I am perfectly satisfied to take up this one case alone.

Mr. Stevens: I want to show the Judge that it is not a device that we are trying to evade.

Mr. Glasgow: I do not charge that, Mr. Stevens; but in the assertion of this claim the New Haven road is just as culpable as you were. I do not think—I mean that with perfect respect to you—I mean that in my contemplation of it it violated the law, and I do not believe that this is a valid claim, but is one prohibited by policy and by the Act to regulate commerce; and that when you did that, when you undertook to pay a claim by making a less rate than given to other people, you came directly in the teeth of the Act.

Mr. Stevens: Of course, I may be wrong. If we have done wrong, we are ready to be censured. I cannot quite conceive of the difference of paying a claim, whether we pay $100,000 in money to satisfy a claim at factitious prices, or when the conditions have altered and you can get coal at reasonable prices, and we pay it part in money and part in coal. That is our position. If we are wrong, we are ready to be reprimanded and to discontinue the practice.

Commissioner Clements: This is not a question of reprimand. It is just a question of whether the law is being violated, and, if it is, how to stop it.

Mr. Stevens: If we are violating the law we will stop it. We do not want to violate the law. There has never been a concern

that has tried to uphold the rulings of the Commission more than we have.

Commissioner Clements: If this was an illegal contract, if the rebates were allowed, and during its life was unlawful for that reason, was not it equally unlawful to resurrect it by this or by any other means? This is probably no more unlawful than if you had paid it in cash. Isn't it the same thing in substance whether you paid it in one form or the other? It is paid to a consignee interested in freight rate and in the property and who gets it in competition with other dealers.

Mr. Wickham: We were concerned with this very serious proposition and the result. If we could have compromised on the payment of 50 per cent.—if it is a *bona fida* claim as we recognized it was—it does not seem to me that there can be any difference between our delivering the New Haven road a hundred thousand dollars or $50,000. Let us get out of this the best way we can.

Mr. Glasgow: My position would be that it would be equally unlawful for you to have paid that $50,000 in money originating out of a contract in which the New Haven road was in the same position that the Chesapeake & Ohio was.

Mr. Wickham: That was a question involving the charter of the railroad company. The statute law of West Virginia, the law of New York, and the law of Connecticut, and the Federal law—we always have understood that a *bona fide* claim for damages could be adjusted if it was not used as a device, and we did not want to cut a rate or make some device to evade the law. In this case we say we have done everything we can. There is not a coal man on the Atlantic Coast that did not know of this transaction; everybody knew about it; it was no secret; and we would have adjusted a damage claim the best way we could to the interest of all concerned.

Mr. Stevens: Do I understand Mr. Glasgow to say that it was not different whether we had paid the $100,000 claim for damages, or adjusted part in coal and part in cash?

Mr. Glasgow: I do not recognize any difference between the

two transactions. I think there is a very clear distinction; I think they are both equally wrong.

Mr. Stevens: That is what I want to bring out. That we should have done neither?

Mr. Glasgow: Exactly.

Mr. Stevens: That is a clear-cut proposition where we are up against a civil transaction.

Commissioner Clements: There are two ways of evading this law in regard to published tariffs—one is to takes less than the published rate originally, another is to collect and pay back freight in the way of rebate, and this has been many times done in the name of a damage claim.

Mr. Wickham: This claim was not a falsely made claim, but the settlement of a *bona fide* claim.

Commissioner Clements: But in fact there is as much discrimination against other parties as if it had been a device, because in its effect it does not make any difference.

Mr. Glasgow: Here is a claim which the law, by the enactment of the Elkins Law——. This new contract was made, and right in face of it, immediately after its enactment, the New York, New Haven & Hartford Railroad Company makes a claim against you, which originated in a contract by which you were giving them a less rate on coal (by you I mean the Chesapeake & Ohio) than it gave to other people; and immediately following the Elkins Act this new arrangement was made upon a demand from them growing out of a contract which the law expressly, by first enactment in 1887 and re-enactment just before the arrangement was made, absolutely prohibited.

Mr. Stevens: I want to state that the delivery of this 60,000 tons of coal which was due on this old contract made no difference with any other shipper that had coal to sell, from the fact that the New Haven road immediately our contract expired in July, 1902, made a new contract with the West Virginia Central & Pittsburg for a term of five years for a quantity of coal aggregating, I believe, 500,000 tons a year, so that they had their coal supply secure. They simply were securing a pound of flesh from us to get the last 2,000,000 lot that we had.

Commissioner Clements: And now they have a similar arrangement with the same company?

Mr. Stevens: I understand so.

Mr. Glasgow: They did not make this demand on you until coal went very high?

Mr. Stevens: All during the months of last year when we have the strike on our hands.

Mr. Glasgow: After the contract closed—that is, July 1, 1902, no demand was made on you for damages until some time during the winter of 1902-1903?

Mr. Stevens: They demanded the coal. I answered that it was simply impossible to get the coal, to get coal even for our own locomotives; and the thing drifted along. We afterwards received a bill from the New Haven road for $100,000, charging up 60,000 tons of coal bought by them at these high prices, which we could not consider; and this is the way we tried to carry out the contract and do as little damage to the railway company as possible. We had no idea of evading the law, or no idea of giving a preferential rate to anybody. The thought never entered our head that it would.

Commissioner Clements: Just illustrate how this works out. This is informal, but we are trying to get at the effect of these things, not only in this instance, but in others. We had a case a few years ago where the Chicago Great Western road had organized a corporation company called the Iowa Improvement Company, and that Improvement Company bought grain in the West and shipped it, and the Chicago Great Western owned all the stock in that Improvement Company; and so, as Mr. Wickham has already stated, it was a mere question of bookkeeping.

They testified that they paid the rate, and doubtless they did pay the rate, or all that was left after the purchasing, handling, and delivery of the grain was taken care of. If it was more the freight rate was less, as it generally was.

Mr. Stevens: You ought to take into consideration the business conditions and the intent of the parties.

Commissioner Clements: You take into consideration the con-

ditions so far as some things are concerned, but so far as carrying out some things is concerned, you have to take account of the intent more than the conditions. Suppose this other contract is, as Mr. Stevens has understood it was, with another company and for five years more. Who can tell but that the price of coal will go up and the rates will be changed in such a way as it will be impossible to carry them out except by a cut in freight rates.

Mr. Wickham: Is it not possible to make some assurances to an industry about to be established on your line that he will have certain freight rates?

Commissioner Clements: You may contract for freight rates, but you have to let everybody else have the same rates.

Mr. Stevens: I want to say that while it is true that railway companies were interested in contracts like this in past years, in the last three years the Chesapeake & Ohio Railway Company has had nothing to do with anything beyond tidewater, and whatever coal was shipped was shipped there at a rate that is published and open and aboveboard, and they had nothing to do with the sale of coal beyond Newport News. I think Mr. Glasgow——

Mr. Glasgow: I have no reason to think to the contrary, sir.

Mr. Stevens: We are simply endeavoring to get rid of an old obligation, and no similar obligation has been entered into in the last three years.

Commissioner Clements: At this recent coal investigation in New York we found everything in there; that they have a right to buy and sell coal—they appeared to have, so far as the State law is concerned. But isn't it true that whatever a State law provides or prohibits must give way to an Act of Congress; that so far as interstate commerce is concerned there must be equal treatment, which the law requires?

Mr. Stevens: I am one of the railroad managers greatly in favor of the Interstate Commerce Commission and its power to regulate these matters, and believe that great good has resulted from their action, and we are willing and ready and anxious to live under the law.

Commissioner Clements: This is pleasant, and we are not particularly anxious to go out of our way to get you or any one else, in fact. We are charged in a serious way with the duty of enforcing this law, and it is a question whether or not if in an isolated case, and it comes over from an unfortunate period of general lawlessness—when I say that I am not talking about your company in particular, for they seem all to have got into this condition, and very naturally if one does it the others will and must, as you know better than I do—if the law is to be enforced at all it must be enforced in regard to all, because if any one is allowed to deviate from it the others are compelled to do so or suffer.

Mr. Stevens: When I said the West Virginia Central & Pittsburg, the contract may have been with the Davis Coal & Coke Company, which is a creature of the West Virginia Central. I know that the contract was made, and at a price we could not meet.

Commissioner Clements: If there is not a stand taken somewhere, there will be no end to it.

Mr. Stevens: I do not think there is going to be any more contracts of this kind made by any railroad company.

Mr. Glasgow: The coal shipped under this arrangement goes to Newport News, and is there shipped direct to New Haven?

Mr. Stevens: Yes, sir.

Mr. Glasgow: By a barge or vessel?

Mr. Stevens: Any coastwise craft.

Mr. Glasgow: Either barge or vessel?

Mr. Stevens: Yes, sir.

Mr. Glasgow: The published rate of $1.45 would apply on this coal, provided the circumstances that you have related do not take it out and make it an exception? Do you understand my question?

Mr. Stevens: The full tariff rate will be collected on this coal. If there is any loss to the railroad company, there will be a loss in adjusting this matter. It will not be taken out of the rate; it will be deducted as a charge against income, as a claim that

has been adjusted and charged up against the deduction from income.

Mr. Glasgow: I do not know that you understand my question. Upon this coal the rate of $1.45 would apply unless this case is an exception to be taken out by the circumstances you suggest?

Mr. Stevens: Yes sir. On all coal shipments from the Kanawha District the rate of $1.45 is being charged and collected not only on other shipments, but on these shipments. But I say we have got a claim to meet after the thing is adjusted which we will handle by a deduction from income, and not interefere with the rate.

Commissioner Clements: It will mean the same thing in the end?

Mr. Stevens: Yes, sir.

Commissioner Clements: There is no difference in substance, is there?

Mr. Stevens: No; the company has to stand it.

Mr. Glasgow: Then, as I understand the figures given on page three of the affidavit, which make up the sum total of $2.52, are substantially correct—on page three at the bottom?

Mr. Stevens: You have got in one item, commission to broker, which should be eliminated; and my information is that the ocean rates are considerably less than a dollar; that the items as respects the cost of the coal and the discharging are correct. The others are incorrect.

Mr. Glasgow: Well, you say the five cents should be eliminated. What should be deducted from the dollar to make it what you think is correct?

Mr. Stevens: Well, I have not the absolute information as to ocean rates, but my understanding was that the rate would not be in excess of 90——

Mr. Glasgow: Probably considerably less?

Mr. Stevens, (continuing) and in all probability less than that.

Mr. Glasgow: Not below eighty?

Mr. Stevens: There were no figures stated except as I have said.

Mr. Glasgow: Did you not have to figure on that in arriving at a conclusion as to whether you would furnish this coal?

Mr. Stevens: The vessel rate would not exceed 90 cents, was my understanding; would be as much less as the vessels could arrange for.

Commissioner Clements: So that these figures, while varying from time to time on account of the ocean rate, would in no case be sufficient to pay the published freight rate?

Mr. Stevens: No, indeed; that is, if you deducted it from the rate; if we make the deduction from the rate, no sir.

Mr. Glasgow: Do you know, Mr. Stevens, what the current ocean rate now is?

Mr. Stevens: I have no information, no sir, but I think it is about 90 cents to Boston; New Haven would be a little less.

Commissioner Clements: Any other questions you want to ask on any part of this?

Mr. Glasgow: No sir.

Commissioner Clements: Mr. Wickham, have you any further questions you want to ask?

Mr. Wickham: No sir, we are here to give the Commission all the information in our power.

Mr. Stevens: I want to say that on page three—the new contract was made between the New Haven road by Mr. Wittenburg. We do not want to accept that as a correct statement because the New Haven road did not make a new contract with anybody.

Commissioner Clements: You mean to state that it is not a new contract?

Mr. Stevens: It reads thus: "And during the winter of 1902-1903 the President of the Chesapeake & Ohio Railway Company arranged a new contract between the New York, New Haven & Hartford Railroad Company, through a coal broker, by name Wittenburg, and a coal operator in the Kanawha District by the name of Thomas." The railway company simply

were notified by the New Haven road that they insisted upon the delivery of that coal, and that if it was more advantageous to us to ship Kanawha coal than New River coal, they would accept Kanawha coal. Thereupon, after failing to make an equitable arrangement with the New River people, I did arrange through Mr. Thomas to furnish that coal, and also arranged with Mr. Wittenburg to have the facilities and vessels, and see that it was shipped, as he was their eastern coal agent. This is why the arrangement was made with Mr. Wittenburg.

Mr. Glasgow: When the arrangement was made in April, 1903, the class of coal covered by the agreement with the New Haven road was a different coal; the broker who was to look after it for you was not a party to the other contract?

Mr. Stevens: No sir.

Mr. Glasgow: The parties who were to deliver the coal, were to produce it and deliver it, were different parties from the former contract, were they not?

Mr. Stevens. From a different field. The fact is that, as I have stated, an equitable price could not be reached with the New River operators. Thereupon, the President of the New Haven road said that, as he had used some Kanawha coal during the winter and had thought well of it, if we could make better arrangements as to the price for that coal, he had no objection to accepting it in lieu of New River coal.

Commissioner Clements: How much of these things are in writing—anything but the original contract between Mr. Ingalls and the New Haven road? Is there any written agreement about it anywhere along the line?

Mr. Stevens: No sir, not to my knowledge.

Mr. Glasgow: Was there any contract made in 1903?

Mr. Stevens: No sir; all arrangements were made orally.

Commissioner Clements: There was no correspondence about it?

Mr. Stevens: No sir.

Mr. Glasgow: When did they first render a bill to you for damages?

Mr. Stevens: Sometime in the winter—January 12.

Mr. Glasgow: At that time the price of coal had gone up very high in New England, had it not?

Mr. Stevens: Yes, sir.

Mr. Glasgow: The railroads in New England, I suppose, like the railroads elsewhere at that time, were looking to every point at which they could get coal, were they not, at a reasonable price?

Mr. Stevens: Yes sir. The railroads in New England, as well as elsewhere, were looking for coal, due to the fact that the people with whom they had contracts were not filling those contracts. The New England roads had ample contracts for coal, but the contractors failed to deliver the coal as required, and they bought the coal on the market at high prices; and some of that they charged up to us.

Mr. Glasgow: So that they were looking around anywhere to get coal at as reasonable prices as possible.

Mr. Stevens: Yes sir. We bought some fuel coal from the Northwestern operators, because at the time——

Commissioner Clements: How much do you lack now of having fulfilled your obligation?

Mr. Stevens: We delivered in May 17,000 tons, and in June 16,000, that would make 33,000, leaving about 27,000 yet to deliver—23 and a fraction.

Commissioner Clements: Was there some correspondence about that bill they rendered you? Did you answer that in writing?

Mr. Stevens: The bill was addressed to our Comptroller, and I simply asked him to acknowledge receipt and say—my recollection is that I told him I would confer personally with Judge Hall in regard to it.

Commissioner Clements: With whom was the arrangement made with on behalf of the New Haven road?

Mr. Stevens: The original or the recent arrangement?

Commissioner Clements: The recent arrangement.

Mr. Stevens: Judge Hall, President.

Commissioner Clements: And the original contract was made between the President of the company?

Mr. Stevens: Mr. Ingalls, the President of the Chesapeake & Ohio Railway Company and Mr. C. S. Mullen the then Second Vice-President of the New Haven road.

Commissioner Clements: Is there any objection to your giving us a copy of that contract? I suppose you have a copy of it, a copy of that original contract and a copy of this bill that has been rendered here.

Mr. Wickham: We shall be very happy to furnish it; they will be furnished.

(The same is hereto attached and marked "Exhibit A")

Commissioner Clements: They will throw some light on this subject and we should like to have them. It is only for the purpose of supplementing all you say, of course. It shows better what you are talking about.

Mr. Stevens: Here is a copy of the freight bill that we rendered on June 6th, 1903, for the freight on coal in May. I do not know whether that bill has been paid or not, because I was absent from Richmond when your summons came; but it was rendered June 6th, and should have been paid, and I have no doubt it has been.

(The freight bill referred to is hereto attached and marked "Exhibit B.")

Mr. Glasgow: Mr. Stevens, I want to ask you about that contract that you say was made with the West Virginia Central. What character of contract was that?

Mr. Stevens: Well, now, I corrected myself by saying that I did not know that it was made with the West Virginia Central, but that it was made with the Davis Coal & Coke Company, which is an adjunct of the railroad company. That I have from heresay, that such a contract was made.

Mr. Glasgow: What character of contract was it?

Mr. Stevens: Five-year contract for 500,000 tons per year.

Mr. Glasgow: At what price?

Mr. Stevens: I do not know.

Mr. Glasgow: The contract was made with the New Haven road.

Mr. Stevens: Yes sir; that was my information, and it was at a price that neither the Norfolk & Western or the Chesapeake & Ohio fields could reach because if it had been at even figures, we, or our operators, would have had the first call on equal prices; that I know.

Mr. Glasgow: In the ordinary shipping of coal on your line, how often do you require freight to be paid on the coal?

Mr. Stevens: The regular shippers who are reliable we sometimes render bill to monthly and sometimes weekly.

Mr. Glasgow: Was not the arrangement, Mr. Stevens, as to this matter, that Mr. Wittenburg was not to collect or pay any freight, or the New Haven road were not to pay any freight, until the whole delivery had been made, and then an adjustment was to be made?

Mr. Stevens: There was no talk upon that point, at all, to my recollection.

Mr. Glasgow: In the ordinary shipping of coal through Mr. Wittenburg, Mr. C. J. Wittenburg, does he pay the freight?

Mr. Stevens: Yes sir. I do not know whether he has paid any freight on this coal; I do not know whether that bill has been paid or not; I did not have that information because I was in Richmond when this matter came up.

Mr. Glasgow: I notice the date of the bill is July 6th; but was not Mr. Wittenburg given to understand that he would not be required to pay any freight on this coal at any time?

Mr. Stevens: I do not know of any such understanding; I have no recollection of any such understanding.

Mr. Glasgow: Was he required under the arrangement you made to collect the money from the New Haven road?

Mr. Stevens: I do not think there was anything said about it. I simply made the arrangement in a verbal way in his office in five minutes. I was on the point of leaving on a western trip, and the details were to come up and be arranged later. They went ahead and shipped the coal while I was absent.

Mr. Glasgow: You did not expect Mr. Wittenburg to pay this freight without collecting it from the New Haven road, did you?

Mr. Stevens: Certainly it should be paid by Mr. Wittenburg.

Mr. Glasgow: I want to know because my information is that the arrangement was that no freight on this coal should be paid until the whole thing had been delivered, the whole amount delivered, and that no freight had been paid on the 25,000 tons already delivered up to this time, and that the arrangement was that no freight was to be paid on this at all until the whole amount was delivered, and that there was to be some adjustment, —that is my information.

Mr. Stevens: I do not see what bearing that has on the matter. I do not recollect any conversation passing on that subject; there might have been; but I do not see what this has to do with the point at issue.

Mr. Glasgow: That is my information. I should just like to know whether it is correct.

Mr. Stevens: I never had an arrangement yet that somebody didn't have a different construction of.

Mr. Glasgow: That is my understanding of it from the information I have gotten. I should like to know whether that is correct.

Mr. Stevens: You can say a great many things in gossip.

Mr. Glasgow: That is quite true. But isn't it a fact, Mr. Stevens?

Mr. Stevens: I do not know.

Commissioner Clements: There has been an adjustment?

Mr. Stevens: Yes, sir.

Mr. Glasgow: Do you know when this bill was made out?

Mr. Stevens: No sir.

Mr. Glasgow: You do not know whether it has ever been delivered to Mr. Wittenburg?

Mr. Stevens. No sir. Mr. Wickham got it from the Comptroller's office in my absence; I was not there.

Commissioner Clements: Is there anything further you want to say about this, Mr. Stevens?

Mr. Stevens: I think I have stated our case about as fully as I can, and have taken up much of your valuable time.

Commissioner Clements: We are obliged to you for coming here so promptly.

At 12:30 P. M. the taking of testimony was completed.

IN THE CIRCUIT COURT OF THE UNITED STATES

IN AND FOR THE WESTERN DISTRICT OF VIRGINIA.

Interstate Commerce Commission
v.
The Chesapeake & Ohio Railway Company and The New York, New Haven & Hartford Railway Company. } In Equity.

ORDER.

This cause coming on to be heard on the petition of the Interstate Commerce Commission and exhibits therewith, to-wit: the affidavit of W. C. Bullitt, the order of the Interstate Commerce Commission of July 1st, 1903, and the testimony of George W. Stevens, President of the Chesapeake & Ohio Railway Company, taken before the Commission on July the 3rd, 1903, this day filed by direction of the Attorney General of the United States; and on the motion of the petitioner for a temporary injunction; and said petition and exhibits therewith having been read, and the court being fully advised in the premises, doth order that the motion be set down for hearing on Friday, July the 31st next, at 2:30 o'clock P. M. at the United States Court House, Lynchburg, Virginia, and that until that date, or the further order of this court, the defendant the Chesapeake & Ohio Railway Company, its officers, agents and servants, and they all and each and every one of them are hereby enjoined and restrained from

further acting under and enforcing and executing in any manner whatsoever any agreement to transport over the defendant's railroad, or any part thereof between the States, any coal or any other interstate traffic at any greater or less rate than the rates named for such service in defendant's established schedule or tariff in force on its line, and at the time said traffic is transported on file with the Interstate Commerce Commission, or in any way practising discrimination or departing from their schedule or tariff rates in carrying any of said coal or other traffic between the states; and the said Chesapeake & Ohio Railway Company, its officers, agents, and servants be and they are enjoined from hereafter agreeing with any shipper or any person to transport coal or any other interstate traffic at any other or different rate than such as may be provided for in its schedules or tariffs as filed and published according to law, and they are also enjoined and restrained from paying any rebate or making any concession whatever in the rates and charges of the Chesapeake & Ohio Railway Company whereby any such traffic transported by it over its railroad, or any traffic in the transportation of which the Chesapeake & Ohio Railway Company may participate, shall be carried by it in whole or in part at any rate different from the established rate at which said traffic shall be transported then on file with the Interstate Commerce Commission according to law.

And the defendant the New York, New Haven & Hartford Railroad Company, its officers, agents and servants, and each and all of them be and they are hereby enjoined and restrained from accepting or receiving any rebate, concession or discrimination in respect to the transportation of coal or any other interstate traffic carried for it, or in which it is interested, or from soliciting, accepting or receiving any rebate, concession or discrimination in respect to the transportation of any property in interstate traffic, or from soliciting, accepting or receiving any rebate, concession or discrimination in respect to the transportation of any property in interstate commerce whereby any advantage is given to, or discrimination is practiced, in its favor.

It is further ordered that copies of this order be served on the defendants the Chesapeake & Ohio Rialway Company and the New York, New Haven & Hartford Railroad Company respectively, returnable the 31st day of July, 1903.

HENRY C. McDOWELL,
District Judge.

July 13, 1903.

IN THE CIRCUIT COURT OF THE UNITED STATES

IN AND FOR THE WESTERN DISTRICT OF VIRGINIA.

Interstate Commerce Commission
v.
Chesapeake & Ohio Railway Company and The New York, New Haven & Hartford Railroad Company. } In Equity.

ORDER.

On the motion of the New York, New Haven & Hartford Railroad Company, and with the consent of the plaintiff in this cause and of the defendant, the Chesapeake & Ohio Railway Company, it is ordered that the motion heretofore set down for hearing on Friday, July 31st, be continued to Thursday, October 1st, 1903, at 10:30 o'clock A. M. at the United States Court House, Lynchburg, Virginia, and that until that date, or the further order of the court, the temporary injunction heretofore awarded in this case be continued in force.

It is further ordered that the defendants herein file in the Clerk's office of this court their answers on or before September 10th, 1903.

HENRY C. McDOWELL,
District Judge.

July 27, 1903.

IN THE CIRCUIT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF VIRGINIA.

Interstate Commerce Commission
v.
Chesapeake & Ohio Railway Company and New York, New Haven & Hartford Railroad Company. } In Equity.

ORDER.

It is by consent of parties, ordered that the motion heretofore set down for hearing on October 1st, 1903, be continued to Wednesday November 4th, 1903, at 10:30 A. M. at the United States Court House, Lynchburg, Virginia, and it is further ordered that the temporary injunction heretofore awarded in this case be continued in force until the further order of this court.

HENRY C. McDOWELL,
District Judge.

September 30, 1903.

IN THE CIRCUIT COURT OF THE UNITED STATES
IN THE WESTERN DISTRICT OF VIRGINIA.

Interstate Commerce Commission
v.
Chesapeake & Ohio Railway Company and New York, New Haven & Hartford Railroad Company. } In Equity.

ORDER.

It is ordered by the Court that the motion heretofore set down for hearing on November 4, 1903, be, and the same is, hereby continued to Tuesday, December 1, 1903, at ten o'clock A. M. at the United States Court House, Lynchburg, Virginia, and it is

further ordered that the temporary injunction heretofore awarded in this case be continued in force until the further order of this Court.

It is further ordered that the defendants in this case file such affidavit and documentary evidence as they may desire to file on or before the 10th day of November, and that the plaintiff file such counter affidavits as it may desire, or cross-examine such of defendants' witnesses as it may desire to cross-examine on or before the 20th day of November, 1903.

HENRY C. McDOWELL,
District Judge.

Enter October 26, 1903.

IN THE CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF VIRGINIA.

The Interstate Commerce Commission, Petitioner,
v.
The Chesapeake & Ohio Railway Company, and The New York, New Haven and Hartford Railroad Company, Defendants.
} On Petition

The separate answer of the Chesapeake & Ohio Railway Company to the petition of the Interstate Commerce Commission.

This respondent says that it is true that it is engaged in freight traffic between the Kanawha District in West Virginia and Newport News in the State of Virginia, but it is not true that it is engaged in carrying freight at less than its published rates on file, or that it is committing discrimination forbidden by law as in said petition alleged.

This respondent specifically denies that it made a contract during the Spring of 1903, to carry a large amount of coal, to-wit, 59,966 tons, from the Kanawha District of West Vir-

ginia to tidewater at Newport News in the State of Virginia, for shipment to New Haven for the New York, New Haven & Hartford Railroad Company, in violation of its published tariffs or in violation of the Act to Regulate commerce and the various amendments thereto, or that it ever has had, or now has, any purpose or design to transgress or evade the provisions of said act.

This respondent further answering says it is true, as alleged, that on December 3, 1896, it entered into a writen contract with the New York, New Haven & Hartford Railroad Company, a substantial copy whereof is annexed to the petition in this cause, whereby it agreed to sell and deliver to the latter company 2,000,000 tons of bituminous coal in such quantities as might be called for, from July 1, 1897 to July 1, 1902, deliveries not to exceed 400,000 tons annually, at the price of $2.75 per ton, New Haven basis; but notwithstanding the allegation of the petition that this contract is illegal and void, this respondent denies that the validity of said contract is an Interstate Commerce question, or a proper subject of adjudication in this proceeding.

Further answering this respondent says that deliveries were made under said contract and would have been substantially completed in accordance with its terms, had not the coal miners strike intervened which caused almost an entire cessation of coal shipments upon the line of this respondent, and caused a shortage undelivered under said contract on July 1, 1902, of 59,966 tons. Subsequently this respondent endeavored to induce the New River operators, who had been taking care of this contract theretofore, to continue to supply the coal, but they refused to do so. On January 12, 1903, the New York, New Haven & Hartford Railroad Company rendered a bill against this respondent amounting to $103,910.69 for the excess over contract price paid by the former company for bituminous coal "purchased outside to make good shortage on contract," a copy whereof is hereto attached marked Exhibit "A., C. & O." This respondent, recognizing its obligation arising under said contract, and desiring in good faith to discharge it, arranged verb-

ally with the New York, New Haven & Hartford Railroad Company to deliver to it 59,966 tons of Kanawha coal, the deficiency under its contract as aforesaid, instead of New River coal, the latter company consenting to accept the lower grade coal and to release its claim for said $103,910.69; and therupon, in pursuance of this understanding, a verbal arrangement was made with the Kanawha Fuel Company, of which J. R. Thomas was President, and the C. & O. Coal and Coke Company, of which C. J. Wittenburg was President, to complete the delivery of said 59,966 tons of coal as aforesaid. When this arrangement to complete the delivery of coal was made nothing was said as to the details of its execution, but the understanding of the President of The Chesapeake & Ohio Railway Company, who negotiated this matter, was that the C. & O. Coal and Coke Company would handle the transaction, and this respondent was to make good to it the difference between the cost of delivering the coal at New Haven, including the full tariff rate to Newport News, and the price of $2.75 per ton to be paid for the coal by the New York, New Haven & Hartford Railroad Company. The C. & O. Coal and Coke Company was not engaged in this transaction in selling and delivering coal in the usual course of business, or in selling coal to the New York, New Haven & Hartford Railroad Company, but on the contrary it was without charge assisting this respondent to discharge its obligation to the latter company.

By this arrangement with the New York, New Haven and Hartford Railroad Company this respondent settled (as shown by the petition) a liquidated claim against it for damages amounting to $103,910.69, which amount should be taken into account in any just estimate of the consideration to be received, on the one side, and to be paid on the other, for the coal furnished and to be furnished as aforesaid; but, notwithstanding the fact that the charge of discrimination in freight rates set up in the petition is predicated solely on the price of said coal, the petition takes no account of said claim as a part of the consideration. The arrangement involved no illegal advantage to either this respondent or to the New York, New Haven and

Hartford Railroad Company, and imposed no injury on any shipper of coal over the lines of this respondent. The latter company, which is alleged in the petition to be the beneficiary of the discrimination in freight rates therein charged against this defendant, was not a shipper of coal, and had no property in the coal alleged to have been carried, or to be under contract for carriage until the same had been, or should be, delivered into its coal bins at the several points on its line, according to the requisitions of its Purchasing Agent; and the said company, being a buyer of coal delivered or to be delivered at a fixed price, had no interest in the freight charges thereon, and could not be benefited or injured by the reduction or increase of said charges.

The actual shipper of the coal in question, as appears from the petition, was an operator in the Kanawha District of West Virginia, and though the petition alleges and charges that this respondent, in arranging for said coal to be furnished by the Kanawha Fuel Company and the C. & O. Coal and Coke Company as aforesaid, committed a discrimination "against all other coal produced in the Kanawha District of West Virginia," it does not make said companies parties to this proceeding, or allege that there was any discrimination in their favor, or that they derived any illegal benefit or advantage from said arrangement over any other operators in the same district, or that any shipper of coal over the lines of your respondent was thereby unlawfully discriminated against; and this respondent denies that said companies derived any such illegal benefit or advantage from said arrangement or that any shipper of coal over its lines was injured thereby.

It appears accordingly from said petition that the unlawful discrimination alleged did not benefit its alleged beneficiary, the New York, New Haven and Hartford Railroad Company, or the operator or any other person by or through whom the coal in respect to which the discrimination is charged, was furnished; and that the alleged unlawful discrimination did not injure any operator in the same district or elsewhere on the lines of your respondent.

Further answering this respondent says that on the 20th. of June 1903, an account at the full published rate, bearing date June 6, 1903, was sent to the C. & O. Coal and Coke Company for the shipments which had been made in May, amounting to 17,708 tons, and a further account at said full published rate for shipments made in June, amounting to 16,207 tons, was sent to the C. & O. Coal and Coke Company on July 2, 1903. Copies of these accounts are filed herewith marked respectively "B., C. & O." and "C., C. & O." The former of these bills, which was rendered before this proceeding had been instituted, or was anticipated, confirms the foregoing statements as to the nature of the transaction in question. These bills will be collected or accounted for in the settlement for said coal.

Further answering this respondent says that the allegation of the petition that the rate charged for the transportation of this coal was 29 cents per ton was misleading, and does not correctly state the transaction in that it quotes erroneous figures, and does not take account of the contract in its entirety, or of the settlement of a liquidated claim against it for damages amounting to $103,910.69 thereby assuming as true what it was designed to prove.

It is true that the cost of this coal at the mines was	$1 28
That the regular freight tariff from the Kanawa District to Newport News for shipment beyond the Capes was	1 45
That the ocean rates varied, but upon the coal carried as set out in exhibits "B" and "C" C. & O. said ocean rates averaged . . .	88½
That the cost of discharging was	19
Total	$3 80½
against which is to be credited the price of coal named in the contract	2 75
leaving the loss to be adjusted	$1 05½

Now that this loss was not a tariff matter is demonstrated when the attempt is made to deduct from the rate of $1.45 the $1.05½, because no rational railroad manager, in order to carry 59,966 tons of coal would attempt a device of this kind in order to carry said coal at 39½ cents per ton. If this had been a device to carry at less than the published tariff rate no rational manager would have made a cut in the rate of $1.05½ (of nearly three fourths) at a time when he might have practically commanded the general market at a far less reduction.

Further answering this respondent says that the contract between it and the New York, New Haven and Hartford Railroad Company was not in any wise hidden or concealed, but on the contrary was known, or might have been known, to every coal dealer on the Atlantic Coast; it was known to W. C. Bullitt long before he set on foot this proceeding against your respondent; it was no secret; no question was ever raised against it; all fully understood that this respondent was not in fact discriminating, nor intending nor attempting to discriminate in its freight charges, nor intending nor attempting to haul coal at less than its published rate, and that this respondent, by the transaction which is made the basis of this complaint, was simply adjusting and settling an ascertained claim against it amounting to $103,910.69 arising out of said contract, which claim this respondent recognized as valid and binding.

Further answering this respondent says that W. C. Bullitt, on whose complaint this proceeding was inaugurated, is not and has never been a coal operator or interested in coal traffic over its lines, and therefore he could not be prejudiced by the transaction of which he complains.

Further answering this respondent says that in order to protect itself against any loss on its contract with the New York, New Haven and Hartford Railroad Company, it made an arrangement with the New River operators to furnish this coal at 70 cents per ton at the mines, and entered into a contract with the Atlantic Transportation Company for a water rate of 50 cents per ton from Newport News to New Haven; this respondent

says that if these contracts had been carried out its contract with the New York, New Haven and Hartford Railroad Company would have been vastly to its pecuniary advantage.

Further answering this respondent says that the contract between it and the New York, New Haven and Hartford Railroad Company, at the time it was made, and for a considerable portion of its term, yielded a profit over all expenses more than sufficient to fully cover the freight charges of this respondent, and this profit would not have been affected had not the New River operators and the Atlantic Transportation Company failed to carry out their contracts with this respondent; and this respondent says that if reference be had (as should be) to the entire contract and the benefits to be derived therefrom by this respondent, there has been no unjust discrimination in what it has done.

Further answering this respondent says that the allegations in the petition are not, as alleged, substantially in accord with the statements of Geo. W. Stevens, President of the respondent company, as set out in Exhibit No. 1 filed with and made a part of said petition, but that the allegations contained in this answer are in accord with said statements.

This respondent in conclusion denies that it has violated the Interstate Commerce law, or evaded the same by any device or other means whatsoever, or that it has given any undue advantage or practiced any unjust discrimination by what it has done, and it respectfully submits that the said petition fails to state any sufficient cause of action against this respondent.

Wherefore this respondent prays that the said petition be dismissed.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
By GEO. W. STEVENS,
President.

Attest:
C. E. WELLFORD,
Secretary.

State Virginia,
City of Richmond, } ss.

George W. Stevens being duly sworn deposes and says that he is the President of The Chesapeake and Ohio Railway Company, and that the statements contained in the foregoing answer are true to the best of his information, knowledge and belief.

GEO. W. STEVENS.

Sworn to and subscribed before me in my city aforesaid this 8th. day of September 1903.

RO. H. GILLIAM,
Notary Public.

My Commission expires on the 8th. day of May 1904.

EXHIBIT "A," C. & O.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.

Accounting Department.

Audit No. 74387 a,
Registered in Dec. 1902,
Ledger Folio 2999.

New Haven, Conn., Jan. 12, 1903.

Chesapeake & Ohio R. R.

To The New York, New Haven & Hartford Railroad Co. Dr.

(Please remit the amount and send this bill with it to the Treasurer, New Haven, Conn. If further information is required, address Auditor of Disbursements, New Haven, Conn.)

For amount paid for bituminous coal purchased outside to make good shortage on contract.

Yearly quoto of contract ending July 1, 1902,	400,000 tons
Shortage on yr. ending July 1, 1901,	31,314 tons
Total tonnage for delivery during year	431,314 tons

Tonnage for			
Boston deliv'y,	75,000 tons		
Providence "	217,000 tons		
NewHaven "	108,000 tons		
Shrtge from previous yr.			
Prov. ⅔ "	20,658 tons		
Shrtge from previous yr.			
New Haven ⅓	10,656 tons		
Total		431,314 tons	
Tonnage due on or before Jan. 1, 1902, ½ yr.		215,657 tons	
Shipments during same period Boston	34,266 tons		
Prov.	107,990 tons		
N.Hav.	53,858 tons		
Total,		196,114 tons	
Shrtge ½ yr. to Jan. 1, 1902,		19,543 tons	
Boston ½ yr. tonnage due,	37,500 tons		
Boston ½ yr. shipments	34,266 tons		
Bal. due,	3,234 tons@$4.48	$13,448.32	
Above tonnage	@ 3.01	9,734.34	
Net amount due			$ 3,713.98
Average price paid for coal on Boston delivery Dec. 1901, and Jan. 1902,		$4.48	

Contract price with C. & O. for Boston delivery			3.01	
Providence				
½ yr. tonnage due	108,500 tons			
Add ½ shortage	10,329 tons			
Total	118,829 tons			
½ yrs. shipm'ts	107,970 tons			
Bal. due	10,839 tons	@$4.05	$43,897.95	
Above tonnage		@ 2.81	30,457.59	
Net amount due				13,440.36
Average price paid for coal on Providence delivery Dec. 1901, and Jan. 1902, $4.05				
Contract price with C. & O. for Providence delivery			2.81	
N.Hav.				
½ yr. tonnage due	54,000 tons			
Add ½ shortage	5,328 tons			
Total	59,328 tons			
½ yrs. shipm'ts	53,859 tons			
Bal. due	5,470 tons	@$3.84	$21,004.80	
Above tonnage		@ 2.75	15,042.50	
Net amount due				$5,962.30
				$23,116.64
Average price paid for coal on New Hav. delivery Dec. 1901, and Jan. 1902, $3.84				

Contract price with C. & O. for New Haven delivery		2.75	
Tonnage due on or before July 1, 1902, ½ yr.	215,657 tons		
Shipments during same period			
Boston	29,718 tons		
Providence	90,601 tons		
New Haven	54,915 tons		
Total		175,234 tons	
Shortage last ½ yr. to July 1, 1902		40,423 tons	
Boston.			
½ yrs. tonnage due	37,500 tons		
½ yrs. shipments	29,718 tons		
Balance due	7,782 tons	@ $5.00	$ 38,910.00
Above tonnage		@ 3.01	23,423.82
Net amount due,			$15,486.18
Average price paid for coal on Boston delivery, June, 1902,		$5.00	
Contract price with C. & O. for Boston delivery,		3.01	
Providence.			
½ yrs. tonnage due	108,500 tons		
Add ½ shortage,	10,329 tons		
Total,	118,829 tons		
½ yrs. shipments,	90,601 tons		
Balance due,	28,228 tons	@ $4.85,	136,905.80
Above tonnage,		@ 2.81,	79,320.68
Net amount due,			$57,585.12

Average price paid for coal on Providence delivery June, 1902,		$4.85		
Contract price with C. & O. for Prov. delivery,		2.81		
New Haven.				
½ yrs. tonnage due	54,000 tons			
Add ½ shortage	5,328 tons			
Total,	59,328 tons			
½ yrs. shipments,	54,915 tons			
Balance due,	4,413 tons	@ $4.50,	19,858.50	
Above tonnage,		@ 2.75,	12,135.75	
Net amount due,			$7,722.75	
				$80,794.05
Average price paid for coal on New Haven delivery June, 1902,		$4.50		
Contract price with C. & O. for New Haven delivery,		$2.75		
Grand total,				$103,910.69

Credited to

Correct.

Approved,

Examined and registered,

S. C. FLEETWOOD,
Auditor of Disbursements.

Approved:

H. M. KOCHERSPERGER,
Comptroller.

Received, New Haven, Conn. 190 , one hundred and three thousand nine hundred and ten and 69-100 dollars in full of above account.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD,

———, Cashier.

EXHIBIT B., C. & O.

C. & O. Coal & Coke Company,

C. J. Wittenberg, President, New York.

To Chesapeake and Ohio Railway Company, Dr.

Remit to C. E. Potts, Treasurer, Richmond, Va.

1903. Audit Dep't. Bill No.——

June 6. To freight on coal to Newport News, Va. for account of N. Y., N. H. & H. R. R. . $25,727.94

MONTH OF MAY, 1903.

Date	Cargo	Vessel	Cars	Tons	Rate	Freight
1	NH 1	Schr. Jno. Twohy	36	1562	$1.45	$2,264.90
1	1	" " "	1	33	1.35	44.55
7	2	Barge Gwennie	62	2063	1.45	2,991.35
11	3	" Solitaire	57	2154	"	3,131.64
11	3	" "	5	190	1.35	264.86
14	3	Schr. W. Macomber	40	1552	1.45	2,277.30
14	4	" " "	1	48	1.35	64.80
14	5	Barge M.L. Phillips	28	1111	1.45	1,610.95
14	5	" " "	2	87	1.35	117.45
23	6	New Jersey	68	2269	1.45	3,294.05
23	6	" "	1	25	1.35	35.75
25	7	Florida	58	2007	1.45	2,918.37
25	7	"	2	64	1.35	86.40
29	8	White Band	62	2730	1.45	3,971.91
29	9	Jest Point	46	1813	"	2,653.66
	Total,		469	17708		$25,727.94

EXHIBIT "C," C. & O.

C. & O. Coal & Coke Company,
C. J. Wittenberg, President, New York.

To Chesapeake and Ohio Railway Company, Dr.

Remit to C. E. Potts, Treasurer, Richmond, Va.

1903. Audit. Dept., Bill No——

July 2 To freight on coal consigned N. Y., N. H. & H. Railroad.
Month of June, 1903.

Date.	Cargo.	Tons.	Amount
June 2d, 1903.	10	3990	$5,781 00
" 5th "	11	1545	2,258 97
" 8th "	12	2059	2,797 35
" 23d "	13	1684	2,441 96
" " "	14	2155	2,909 25
" 26th "	15	2719	3,926 55
" "	16	2055	2,982 05
Total,		16207	$23,097 13

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF VIRGINIA.

Between The Interstate Commerce Commission, Petitioner,
and
The Chesapeake & Ohio Railway Company and The New York, New Haven & Hartford Railroad Company, Defendants.

} On Petition, &c
} Answer

The separate answer of the New York, New Haven & Hartford Railroad Company to the petition of the Interstate Commerce Commission.

The New York, New Haven & Hartford Railroad Company, one of the above named defendants, answering separately and for itself the petition of the Interstate Commerce Commission, respectfully answers and says:

That the defendant denies that it now is or ever has been a shipper of coal over the lines of the Chesapeake & Ohio Railway Company, and it denies that, in so far as this defendant is concerned, the Chesapeake & Ohio Railway Company is committing any discrimination of rates between this defendant and any other person or persons with respect to the transportation of coal or other freight over its lines.

This defendant, further answering, says that it requires and uses in connection with its own business of operating railroad lines in New England a large amount of coal annually which it is necessary to procure by contract and purchase, and it has long been the custom of this defendant to enter into contracts covering a period of several years whereby it secured at a uniform rate a supply of coal to be delivered on the line of its own railroads at different points in New England; that on or about the 3d day of December, 1896, this defendant entered into a written contract with the Chesapeake & Ohio Railway Company, a substantial copy of which is annexed to the petition in this cause,

to which for greater certainty this defendant begs leave to refer; that by said contract the Chesapeake & Ohio Railway Company agreed to sell and deliver to this defendant 2,000,000 gross tons of bituminous coal in such quantities monthly as wanted by this defendant from July 1, 1897, to July 1, 1902, deliveries not to exceed 400,000 tons per annum; that it was provided by said contract that the Chesapeake & Ohio Railway Company would deliver said coal to this defendant in its bins at such ports upon its line as required by the monthly requisitions of the purchasing agent of this defendant; that the price to be paid by this defendant for said coal delivered as aforesaid during the whole period of five years was $2.75 per gross ton; this defendant having no knowledge whatever of the price that the Chesapeake & Ohio Railway Company expected to pay for the coal at the mines, the tariff rates at that time existing from the mines to Newport News, the cost of handling at Newport News, or the water freights from Newport News to various New England points, which latter item of course varies from day to day,—this defendant having no knowledge of any of these items, but having knowledge only of the contract delivery price of $2.75 per gross ton, which was the only item in which this defendant was interested.

And this defendant further answering says, that the Chesapeake & Ohio Railway Company entered upon the performance of said contract and for several years annually made deliveries to this defendant of the quantities of coal called for by said contract, rendered its bills for the same at the contract price, and was in due course paid for the same by this defendant.

That during the winter of 1900-1901 the Chesapeake & Ohio Railway Company by reason of strikes and other disturbing causes failed to make delivery of the full quantity of coal due under the contract for that year, and by reason of such failure this defendant was compelled to and did supply itself with large quantities of coal from other sources to make up said deficiency, and was compelled to and did pay for the same a greater price than that fixed by said contract, whereby a just and legal claim

for damage and reimbursement arose in favor of this defendant against the Chesapeake & Ohio Railway Company to the amount of $160,000, which claim was settled and compromised by the acceptance of $130,000, which sum the Chesapeake & Ohio Railway Company paid this defendant in liquidation of said damages.

That early in the year 1902 a general strike of coal miners paralyzed the coal industry, greatly restricted the supply of coal, enhanced enormously its price, and rendered it impossible for the Chesapeake & Ohio Railway Company to fully deliver the 400,000 tons of coal required to complete said contract for the last year of its term; that on the 1st of July, 1902, when the whole of said deliveries should have been made, the Chesapeake & Ohio Railway Company was short in its delivery 59,966 tons; that many times during the year 1902 and prior to July 1st in said year, this defendant demanded from the Chesapeake & Ohio Railway Company that it should perform its contract and deliver to this defendant the number of tons of coal due under said contract, but the Chesapeake & Ohio Railway Company pleading its inability to obtain said coal for such delivery, failed to supply and deliver the same within the period of its contract, and as from time to time requested by this defendant; so that it became necessary for this defendant, in order to obtain a supply of coal for the use of its engines and other purposes, to go into the open market and buy other coal in lieu of the 59,966 tons which it had contracted for and which the Chesapeake & Ohio Railway Company ought to have delivered to it for its use; and in so doing this defendant was required to pay for the coal so obtained from outside parties a sum largely in excess of the price it would have been required to pay to the Chesapeake & Ohio Railway Company for said coal if delivered under the contract aforesaid, the amount of such excess being $103,910.69, which amount represented the pecuniary loss and damage sustained by this defendant by reason of the failure of the Chesapeake & Ohio Railway Company to deliver to it the full amount of coal due upon the last year of said contract.

And this defendant further answering says that this defendant, as it had a right to do, made claim and demand against the Chesapeake & Ohio Railway Company for a reimbursement of said sum of $103,910.69, and insisted and required that the same should be made good to it. That the Chesapeake & Ohio Railway Company not denying its legal obligation under said contract and admitting its liability to make good the loss sustained as aforesaid by this defendant by reason of the failure of the Chesapeake & Ohio Railway Company to perform said contract, nevertheless, on account of the hardship of the case and the fact that its non-performance of said contract was not due to its own fault, but to a condition of affairs over which it had no control, suggested to this defendant that instead of paying the amount of said bill for excess, it would, although the period for performance had expired, still carry out the said contract and supply to this defendant the deficiency of 59,966 tons of coal, and this defendant recognizing also the hardship of the case and the unusual circumstances that had brought about the failure of the Chesapeake & Ohio Railway Company to perform its contract in full, did consent to accept and receive from it, in lieu of the payment of said sum of damages, the delivery of the 59,966 tons of coal still in arrears under said contract, and thereupon an adjustment and arrangement were orally made between this defendant and said vendor, and the Chesapeake & Ohio Railway Company immediately entered upon the performance thereof, and at the time of the filing of the complaint in this matter before the Interstate Commerce Commission, had delivered to this defendant 33,915 tons, leaving 26,051 tons of the amount of said deficiency still to be delivered.

And this defendant further answering says that the arrangement last made was not a new and independent contract, but was in fact a virtual extension of the time of the performance of the original contract and should be construed and adjudicated as such.

And this defendant further answering says, that except upon information, it has no knowledge of the price at which said coal

is procured at the mines by the Chesapeake & Ohio Railway Company, nor has it, except upon similar information, any knowledge as to the cost of handling the same or the rates paid by the Chesapeake & Ohio Railway Company for the transportation of said coal from Newport News to New England; and as matter of fact this defendant is not concerned in any degree as to whether the Chesapeake & Ohio Railway Company is furnishing said coal at a loss or at a gain.

And this defendant further answering says, that the Chesapeake & Ohio Railway Company has always held itself out as legally authorized to sell and contract for the sale and delivery of coal, and the fact that it had made such sales and deliveries of coal to various parties, including this defendant, is and has been well known for many years and the existence of the contract between it and this defendant was not in any wise hidden or concealed.

And this defendant further answering says that the Chesapeake & Ohio Railway Company is authorized by the laws of the State of Virginia, from which it obtains its charter privileges, to contract for and sell coal; that the contract in this case was made in the State of New York and the place of performance was in the States of Connecticut, Rhode Island and Massachusetts.

And this defendant further answering says that the only person entitled to raise the defence of ultra vires as against the performance of the said contract is the Chesapeake & Ohio Railway Company, and inasmuch as that Company has not raised such question but concedes that it had lawful power to make and carry out said contract, neither the Interstate Commerce Commission, nor any other person or authority whatever has power to intervene and raise such question as against this defendant; that while it may be true that if the Chesapeake & Ohio Railway Company was engaged in business not authorized by its charter, the State of Virginia, through its Attorney General, might take proceedings either to restrain it from such violations of its charter or to terminate its existence, yet that such right

does not exist on behalf of the Federal Government or any agency thereof, nor is it vested in the Interstate Commerce Commission.

And this defendant further answering, on information and belief, denies that the Chesapeake & Ohio Railway Company is transporting said coal at rates below its published tariff rates. That, as matter of law and proper legal construction, the Chesapeake & Ohio Railway Company is simply engaged in transporting its own property, and the provisions of the Interstate Commerce act relative to discriminations and tariff rates have no application to the carriage by one railroad company of its own property. That as matter of fact at the time the said contract was entered into and during the first three years of its performance, the sale and delivery of said coal was very profitable to the Chesapeake & Ohio Railway Company, and taking into account its cost at the mine, the cost of handling, and ocean freight and the cost of transportation, it yielded to the vendor, the Chesapeake & Ohio Railway Company, an amount largely in excess of any sum required to make up the full tariff of freight rates for the transportation of said coal over the lines of the Chesapeake & Ohio Railway Company provided said coal had been carried for an outside party.

And this defendant further answering says that it was at the option of the Chesapeake & Ohio Railway Company and is still at its option, to procure said coal to be delivered to this defendant by any other shipper or any other coal dealer in the open market and to pay therefor whatever the same may cost, and this defendant has a right under any and all circumstances to require the full performance of the said contract and the delivery of said coal or the payment of the legal damages for its non-performance. That it is erroneous and misleading to assume that, because in the delivery of the deficiency of tonnage under said contract the Chesapeake & Ohio Railway Company is at the present time losing money, it is engaged in discriminating in freight rates against other shippers, the fact being that the said Company is merely performing a contract of sale which it made

and had a right to make, and in the course of such performance is using in part its own lines of railway to transport its own property.

And this defendant further answering denies that it receives any rebate or advantage of any kind for transportation of coal over the lines of the Chesapeake & Ohio Railway Company; it denies that it is shipping or has ever shipped any coal over said line, or that it is concerned in any way in the cost of such transportation or in the rates charged for the same; and it denies that it ever has had or now has any purpose or design to transgress, evade, or in any way nullify the provisions of the Interstate Commerce law that provide for uniform rates of transportation.

And this defendant further answering submits to the Court that the facts, matters and things contained in the petition in this cause are insufficient to justify the interference of this Honorable Court in the premises and that the said petition fails to state any sufficient cause of action against this defendant.

Wherefore this defendant prays that the said petition be dismissed.

DANIEL & HARPER,

Solicitors of defendant New York, New Haven & Hartford Railroad Company.

JOHN W. GRIGGS,

Of Counsel.

Interstate Commerce Commission
v.
Chesapeake & Ohio Railway Company and New York, New Haven & Hartford Railroad Company.

In Equity.
In the Circuit Court of the United States for the Western District of Virginia.

Agreement of counsel representing both complainant and defendants.

I. The copy of the affidavit made by Wm. C. Bullitt, the original of which is on file in the proceeding in this matter be-

fore the Interstate Commerce Commission, which is filed with the bill in this case may be read in evidence for the complainant, and have the same effect as if the matter therein contained appeared by deposition formally taken.

II. The copy of the proceedings before the Interstate Commerce Commission in this matter and the testimony of Geo. W. Stevens before Commissioner Clements, which is filed with complainant's bill, may be read in evidence for the complainant and shall be considered by the Court.

III. The line of road of the Chesapeake & Ohio Railway Company, over which the coal delivered to the New York, New Haven & Hartford Railroad Company was carried, runs through the Western District of Virginia and said coal was carried from a point or points in West Virginia to Newport News in Virginia.

IV. Chesapeake & Ohio Railway Company to file statements showing amount of coal shipped monthly to the N. Y., N. H. & H. R. R. Co. from July 1, 1897 to time of filing petition in this case.

V. Chesapeake & Ohio Railway Company to file statements of prices paid monthly to operators for this coal from July 1, 1897 to time of filing petition in this case.

VI. Chesapeake & Ohio Railway Company to file statements showing average ocean rates paid monthly on coal delivered to the N. Y., H. H. & H. R. R. Co. from July 1, 1897, to time of filing petition in this case.

The plaintiff by counsel to have the right, if so desired, to inspect the original records from which these statements are made up and verify the same.

VII. Chesapeake & Ohio Railway Co. to file statements showing its tariff rates filed with the Interstate Commerce Commission for the period from July 1, 1897, to July 1, 1902, from the New River District in West Virginia to Newport News in Virginia, on coal similar to that delivered to the N. Y., N. H. & H. R. R. Co., showing particularly what period each rate respectively covers.

a. The Chesapeake & Ohio Railway Company and the N. Y., N. H. & H. R. R. Company agree that from July 1, 1897, to July 1,.1902, and from April 1, 1903, to the date of filing the petition in this case, the C. & O. Railway Company charged and collected its full tariff rates on coal other than that shipped to the N. Y., N. H. & H. R. R. Co. from the New River and Kanawha Districts to Newport News for shipment beyond the capes.

This stipulation shall not be taken as an admission that the C. & O. did not receive full rates on the coal shipped to the N. Y., N. H. & H. R. R. Company.

VIII. The defendants may present their case by affidavits which shall have the same effect as if affiants' depositions had been formally taken in this proceeding.

IX. Complainant to have the right, in case it so desires, to present counter affidavits or cross-examine affiants whose affidavits are filed for the defendants, and the defendants may cross-examine the witnesses for the complainant.

X. Defendants admit that the charter of the C. & O. Railway Company does not and did not, in expressed terms, permit it to buy and sell articles of transportation; yet, the defendants claim that the Statutes of Virginia, in expressed terms, permitted the Railway Company to foster business along its lines in various ways, copies of which said Statutes are to be filed herewith by the defendants.

XI. The N. Y., N. H. & H. R. R. Co. agrees to file in record a copy of the contract between it and the C. & O. Railway Company of December 3, 1896, together with the endorsement of guarantee thereon of J. P. Morgan.

XII. The complainant may file in the record copy of the Act of Assembly of the State of West Virginia, known as Chapter 16, Acts of 1895, the title of which is "An Act to Prevent Railroads from Buying and Selling Coal or Coke, and to Prevent Discrimination."

The above is agreed to as a part of the record to be considered by the Court in the above cause.

CHESAPEAKE & OHIO RAILWAY COMPANY,
By Harrison & Long, Attorneys.

NEW YORK, NEW HAVEN & HARTFORD R. R. Co.,
By Daniel & Harper, Per R. H.

INTERSTATE COMMERCE COMMISSION,
By Wm. A. Glasgow, Jr.
Special Attorney U. S.

October 23, 1903.

COPY.

Contract made between the Chesapeake & Ohio Railway Co. and the New York, New Haven & Hartford Railroad Company.

Said Chesapeake & Ohio Railway Company, for the consideration hereinafter mentioned, hereby agrees to furnish to said railroad company not to exceed two million gross tons of bituminous coal from its line in such quantities monthly as wanted from July 1st, 1897, to July 1st 1902, without charge for demurrage. Deliveries to be made not exceeding four hundred thousand tons per annum.

And said Chesapeake & Ohio Railway Company further agrees that all said bituminous coal shall be of the best quality first cl[illegible] in every respect, and satisfactory to said Railroad Comp[illegible] and said Railway Company has the right to terminate this contract at any time if said bituminous coal be of poor quality, or if its delivery be unnessarily delayed.

And said Chesapeake & Ohio Railway Company further agrees to deliver all said bituminous coal to said Railroad Company in its bins at such ports upon its lines as required by the monthly requisitions of its Purchasing Agent.

In consideration of the faithful performance by the said

Chesapeake & Ohio R'y. Co. of all its agreements herein contained, said Railroad Company agrees to pay for said bituminous coal at the rate of two and seventy-five one hundredths dollars per gross ton New Haven basis, settlement to be made *monthly*.

Said Railway Company has the right to cancel any and all portions of said quantity of bituminous coal remaining undelivered on July 1st, 1902.

Witness the names of the parties hereto this the 3rd day of December, 1896.

(Signed) CHESAPEAKE & OHIO R'Y. CO.
By M. E. Ingalls, President.
(Signed) THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.
By C. S. Mellen, Second Vice Prest.

For value received, I hereby guarantee that the Chesapeake & Ohio R'y. Co. shall not fail to deliver coal on account of strikes.

(Signed) J. PIERPONT MORGAN.

Copy
Richmond, Va., Dec. 10th, 1896.

Interstate Commerce Commission
v.
Chesapeake & Ohio Railway Company, and New York, New Haven & Hartford Railroad Company.
} United States Circuit Court, Lynchburg, Va.

I certify that the annexed contract dated December 11, 1896, between J. W. Hopkins of the first part, and the Greenwood Coal and Coke Company, the Laurel Creek Coal and Coke Company, and J. L. Beury of the second part, is a copy of the original of said contract referred to in the answer of the C. & O. Railway

Company to the petition of the Interstate Commerce Commission in the above styled cause, under which the coal called for by the contract between the C. & O. Railway Company and the N. Y., N. H. & H. R. R. Company was to be furnished by the New River operators.

The said contract was duly lodged with me, and has since been in my custody, and will be produced if desired.

C. E. WELLFORD.
Secretary C. & O. Ry. Co.

November 6, 1903.

Chesapeake & Ohio Railway Co.
M. E. Ingalls, President.
Cincinnati, Ohio.

December 11, 1896.

The Greenwood Coal & Coke Co.,
The Laurel Coal & Coke Co.,
J. L. Beury, Esq.,
Dear Sirs:

Referring to a contract executed this day by you, as parties of the second part, with J. W. Hopkins, party of the first part, for the sale of Four Hundred Thousand tons of coal per annum, for five years from the first of next June; for valuable consideration the Chesapeake & Ohio Railway Company hereby guarantees the faithful performance of said contract by said Hopkins.

Yours truly,
President.

This Agreement, made and entered into this eleventh day of December, 1896, by and between J. W. Hopkins, party of the first part, The Greenwood Coal & Coke Company and The Laurel Creek Coal & Coke Company, corporations chartered under the laws of the State of West Virginia and doing business in the County of Fayette, West Virginia, and J. L. Beury, parties of the second part,

Witnesseth: The party of the second part hereby agrees to furnish and the party of the first part to take unless prevented by strikes or other causes beyond their control 400,000 tons of run-of-mine steam coal of full commercial quality each and every twelve months commencing June first 1897 and ending July first, 1902. The party of the first part agrees to pay and the party of the second part agrees to accept seventy cents per ton of 2240 pounds free on board cars on the line of the Chesapeake & Ohio Railway Company in full payment therefor. All coal to be delivered over dock to vessels at Newport News each calendar month, to be paid for in cash on or before the twenty-fifth of the month succeeding.

In case of an advance in the price of mining the party of the second part shall give notice of such proposed advance to the party of the first part and if said party of the first part declines to pay such advance it shall be optional with the party of the first part to terminate this contract.

Second party to be furnished by the party of the first part each and every day cars in sufficient numbers to take the full portion daily of the 400,000 tons per year. Coal delivered by the party of the second part to be open to the inspection of such party or parties as may be appointed by the party of the first part and if not found to be standard run-of-mine coal to be subject to rejection. Should either party to this contract make claim of unfair inspection the matter to be left to arbitration.

The deliveries of coal under this contract are for business outside of any present delivery made over the line of the C. & O. road and not obtainable at existing prices.

The existing charge of 75 cents per car made by the Chesapeake & Ohio Railway Company for delivery of cars to their main line is to be abolished on coal delivered under this contract.

In order to develop the mines sufficiently to produce the requisite 400,000 tons per annum required under this contract agreement is made to take, commencing with the execution of this contract, all coal possible and as regularly as may be from

the before mentioned Greenwood and Laurel mines at current prices until entering upon the performance of this contract.

Payments for coal delivered under this contract are to be made to the legally authorized representatives of the Greenwood Coal & Coke Company and The Laurel Creek Coal & Coke Company.

In witness whereof, the parties hereto and to a duplicate hereof have hereunto set their names and caused their corporate seals to be hereunto attached the day and year first above written.

(Signed) J. W. HOPKINS.
THE GREENWOOD COAL & COKE COMPANY, by
(Signed) Joseph Lawton, its President.
THE LAUREL CREEK COAL & COKE COMPANY, by
(Signed) E. T. Robins, its President.
(Signed) J. L. BEURY.

Attest:
(Sgd) J. E.Robins, Secy.
(Sgd) E. G. Riddle, Secy.

Interstate Commerce Commission
v.
Chesapeake & Ohio Railway Company, and New York, New Haven & Hartford Railroad Company.
} United States Circuit Court, Lynchburg, Va.

I certify that the annexed contract dated December 31, 1897, between the Atlantic Transportation Company and the C. & O. Railway Company for the transportation of coal from the port of Newport News to New Haven and other ports therein mentioned, is a copy of the original of said contract referred to in the answer of the C. & O. Railway Company to the petition of the Interstate Commerce Commission in the above styled cause.

The said contract was duly lodged with me, and has since been in my custody, and will be produced if desired.

C. E. WELLFORD,
Secretary C. & O. Ry. Co.

November 6, 1903.

Memorandum of Agreement.

Memorandum of agreement made and entered into this 31st day of December, Eighteen Hundred and Ninety Seven between The Atlantic Transportation Company, a corporation duly organized and existing under the laws of New Jersey, party of the first part, and the Chesapeake and Ohio Railway Company, a corporation duly organized and existing under the laws of Virginia and West Virginia, party of the second part.

Witnesseth that the party of the first part agrees to the carry and transport coal from the port of Newport News to the ports hereinafter mentioned at the prices per ton as scheduled, to-wit:

New York, forty-five cents	(.45)	(on board)
New Haven, fifty cents	(.50)	"
New London, fifty cents	(.50)	"
Providence, fifty cents	(.50)	"
Fall River, fifty cents	(.50)	"
New Bedford Coal Pockets, fifty cents	(.50)	"
All other ports (shoal water) sixty cents	(.60)	"
Northeast of Cape Cod, sixty cents	(.60)	"

bridge allowance to be two cents (.02) per ton for each and every bridge.

The said party of the first part further agrees to furnish four (4) new barges at once and at all times provide such vessels sufficient and of suitable tonnage as may be satisfactory to the party of the second part and as it may require for the proper conduct and dispatch of the coal transportation provided for in this agreement from the port of Newport News; said party of the first part further agrees not to transport any coal from Hampton Roads except such as may be received from the party of the second part at Newport News during the continuance of this contract and that the facilities offered by it for the transportation provided for in this agreement shall be in all respects first class, prompt and suitable for the business, and acceptable to Marine Underwriters. Said party of the second part shall give best service possible for the expedition of said work.

The said party of the first part further agrees to pay to the said party of the second part out of the rate hereinbefore mentioned, two and one half cents (.02½) per gross ton of 2,240 pounds upon all coal loaded in what are known as "self trimming barges" or vessels, and five cents (.05) per gross ton upon all coal loaded in barges and vessels not known as "self trimming;" it is further agreed that the party of the second part shall, subject to the conditions hereinafter written, deliver to the party of the first part for transportation an amount not less than One Million (1,000,000) gross tons of coal per year with the option to it, the said party of the second part, to increase said delivery to an amount not exceeding Two Million Five Hundred Thousand (2,500,000) gross tons of coal per year, it being understood and agreed however that in the event of strikes in the mines or on the railroad, or other causes beyond the control of the said party of the second part, causing stoppage or partial stoppage of coal delivery, whether at the mines or at Newport News, then and in that event this contract shall at the option of the said party of the second part be suspended or partially suspended or held in abeyance as the case may be during the existence of such conditions, by immediate notice to that effect given in writing to the party of the first part.

It is further agreed that at any time the said party of the first part shall not at once and immediately transport and convey to the destination as above, said coal as delivered or deliverable by the said party of the second part to it, the said party of the second part shall at its option have the privilege of going into the open market to secure suitable barges and vessels at obtainable rates, and that the difference between the contract rates as hereinbefore set out and the rates so paid, shall be paid by the said party of the first part to the said party of the second part and the said party of the first part hereby stipulates, agrees and binds itself to promptly pay such difference.

It is further stipulated and agreed that this contract shall take effect on the first day of April, Eighteen Hundred and Ninety Eight and continue in full force and effect for Two

Years thereafter, with the privilege and option however on the part of the party of the second part to extend the same for the further period of Three Years after the expiration of the Two Years, provided said option is exercised by notice in writing from the party of the second part to the said party of the first part at any time within Sixty Days before the expiration of the said period of Two Years above mentioned.

It is further agreed by and between the parties hereto that in case of any difference or dispute arising under this contract, each party hereto shall submit the same to arbitration in the following manner, viz: each party hereto shall select a disinterested arbitrator and the two thus selected shall choose a disinterested and competent umpire and their decision or that of a majority of them, shall be final and conclusive between the parties hereto, and the party desiring such arbitration shall give written notice of the same to the other party, stating therein definitely the point or points in dispute and the name of the person selected by such party as arbitrator, and it shall be the duty of the other party hereto, within Fifteen Days after receiving such notice to name an arbitrator on its part and notify the other party to this agreement of its choice. The arbitrators thus chosen shall with convenient speed select an umpire as aforesaid, and the board of arbitration thus chosen by the parties hereto shall give to each of the parties hereto written notice of the time and place of hearing, which shall not be less than Ten nor more than Twenty Days thereafter, and at the time and place appointed shall proceed with the hearing, unless for some good cause, of which the board of arbitration or a maority of it, shall be the judge, shall be postponed until some later day within a reasonable time. The award and determination of the said board shall be reduced to writing and a copy thereof delivered to each of the parties hereto and shall be final and conclusive upon the parties in reference to the question or questions thus submitted.

In witness whereof the parties hereto have caused these presents to be signed by their respective Presidents and their corpo-

rative seals to be hereto affixed and attested by their respective Secretaries, the day and year first above written.

THE ATLANTIC TRANSPORTATION COMPANY, by
(Signed) Edw. P. Meany, President.

Attest:

(Signed) Lawrence S. Mott, Secretary.

CHESAPEAKE AND OHIO RAILWAY COMPANY, by
(Signed) M. E. Ingalls, President.

Attest:

(Signed) C. E. Wellford, Secretary.

CHESAPEAKE AND OHIO RAILWAY COMPANY

Statement of Coal Delivered to New York, New Haven & Hartford R. R. Co., with Cost Thereof, Including Charges for Delivery Under Contract Effective 1st July, 1897.

DATE		Total No. Cargoes	WEIGHT		CONTRACT PRICE PAID		COST OF COAL		VESSEL FRT. AND LIGHTERAGE		DISCHARGING		INSURANCE	
Month	Year		Tons	Lbs.	Amount	Average Rate	Amount	Average Rate	Amount	Average Rate	Amount	Average Rate	Amount	Average Rate
July	1897	17	28,890	1140	82,186 11	2.845	20,223 35	.700	18,828 28	.651	6,552 10	.226	248 55	.008
Aug.	"	14	21,619	2110	61,030 78	2.823	15,133 96	.700	13,786 03	.637	4,834 72	.223	184 02	.008
Sept.	"	18	27,629	870	78,755 41	2.850	19,340 55	.700	18,417 17	.666	6,149 78	.222	240 12	.008
Oct.	"	20	30,129	780	85,672 47	2.843	21,090 55	.700	19,801 03	.657	6,748 54	.224	258 57	.008
Nov.	"	19	29,122	1980	82,751 34	2.841	20,386 02	.700	19,190 57	.658	6,445 35	.221	422 07	.014
Dec.	"	21	33,095	1270	93,527 63	2.826	23,166 86	.700	22,350 49	.675	7,550 79	.228	478 05	.014
Jan.	1898	24	39,177	660	111,502 83	2.846	27,424 09	.700	27,408 10	.699	8,855 46	.226	568 11	.014
Feb.	"	26	45,098	1310	126,552 28	2.806	31,568 95	.700	29,961 72	.664	10,366 70	.229	641 01	.014
Mar.	"	25	37,704	190	107,776 87	2.858	26,392 85	.700	26,639 53	.709	8,235 80	.218	550 83	.014
April	"	18	30,125	1760	84,793 56	2.815	21,087 85	.700	18,647 59	.619	6,825 85	.226	252 62	.008
May	"	18	30,128	880	85,081 01	2.824	21,089 85	.700	19,557 91	.649	6,869 94	.228	254 66	.008
June	"	26	40,176	370	113,794 04	2.832	28,123 70	.700	26,132 59	.650	8,986 49	.223	347 38	.008
July	"	13	20,989	1540	59,996 54	2.858	14,692 78	.700	11,784 20	.561	4,641 43	.221	179 36	.008
Aug.	"	10	21,769	180	61,857 95	2.841	15,238 35	.700	11,965 96	.549	4,800 39	.220	188 78	.008
Sept.	"	14	21,551	710	61,886 69	2.871	15,085 94	.700	12,541 58	.582	4,724 42	.219	188 88	.008
Oct.	"	28	47,642	1430	134,319 96	2.819	33,349 82	.700	24,867 19	.522	11,031 63	.231	400 86	.008
Nov.	"	18	27,693	2020	78,820 79	2.846	19,385 78	.700	15,323 45	.553	6,081 81	.219	403 92	.014
Dec.	"	17	23,973	700	67,710 92	2.824	16,781 33	.700	22,361 29	.932	5,385 26	.224	373 12	.015
Jan.	1899	21	28,321	2180	80,274 90	2.834	20,149 49	.711	30,070 29	1.061	6,275 73	.221	418 60	.014
Feb.	"	8	10,414	2180	29,767 60	2.858	7,370 32	.707	12,884 21	1.237	2,211 60	.212	155 99	.014
Mar.	"	20	28,337	1290	81,116 07	2.866	20,345 68	.718	29,381 44	1.036	6,370 18	.324	426 96	.014
April	"	32	52,353	120	149,059 46	2.846	36,597 94	.699	51,373 43	.981	11,796 85	.213	458 23	.008
May	"	20	33,037	160	94,425 93	2.858	23,091 09	.699	26,045 38	.788	7,476 23	.226	289 05	.008
June	"	18	33,644	810	94,612 09	2.812	23,478 70	.697	23,681 71	.703	7,474 52	.222	285 07	.008
July	"	31	51,827	920	145,983 21	2.817	36,123 50	.697	40,448 13	.780	11,496 35	.221	439 87	.008
Aug.	"	13	23,794	150	67,180 93	2.823	16,635 50	.700	18,458 80	.775	5,532 22	.232	200 58	.008
Sept.	"	12	17,600	1460	50,414 82	2.857	12,349 80	.700	14,620 45	.831	4,072 85	.231	155 57	.008
Oct.	"	13	22,406	390	63,415 65	2.826	15,600 75	.700	20,974 94	.936	4,936 82	.220	306 55	.014
Nov.	"	17	27,025	22	76,665 00	2.836	18,899 20	.699	36,566 14	1.353	5,924 87	.219	515 02	.019
Dec.	"	19	31,272	950	88,288 41	2.823	21,771 38	.696	42,777 93	1.368	6,839 61	.218	550 32	.017
Jan.	1900	17	23,859	220	67,647 19	2.853	16,610 30	.696	33,875 82	1.420	4,988 94	.210	473 59	.019
Feb.	"	11	19,709	200	55,282 94	2.805	13,710 20	.695	26,565 02	1.348	4,284 07	.217	265 29	.013
Mar.	"	9	13,240	410	37,671 01	2.844	9,255 70	.699	18,731 88	1.414	2,947 25	.222	252 27	.019
April	"	13	18,438	1080	52,358 23	2.850	17,044 05	.924	22,549 59	1.223	4,074 75	.221	241 59	.013
May	"	16	34,129	1280	96,070 09	2.815	31,611 40	.926	27,144 98	.795	7,489 41	.219	311 80	.009
June	"	15	30,208	964	86,167 71	2.852	27,910 95	.924	22,075 58	.730	6,790 77	.224	371 69	.012
July	"	12	24,109	1890	67,996 44	2.822	22,321 17	.928	16,740 89	.694	5,383 90	.223	312 64	.013
Aug.	"	14	26,200	1560	73,723 29	2.814	24,175 81	.923	17,164 75	.655	5,766 93	.221	286 78	.011
Sept.	"	17	36,176	2190	102,509 03	2.834	33,442 44	.924	29,552 10	.785	8,291 41	.229	333 42	.009
Oct.	"	24	46,906	690	133,499 16	2.845	43,305 71	.923	36,109 12	.769	10,343 40	.225	566 17	.012
Nov.	"	15	32,820	1580	93,299 28	2.843	30,398 26	.926	22,873 65	.697	7,445 39	.227	641 50	.019
Dec.	"	12	26,023	1330	72,951 76	2.803	24,049 08	.924	17,218 95	.662	5,887 65	.226	450 93	.017
Jan.	1901	15	33,716	1750	95,763 80	2.840	31,085 53	.922	25,027 05	.742	7,264 11	.216	572 57	.017
Feb.	"	22	43,912	1240	123,334 06	2.809	40,486 32	.922	29,751 54	.677	9,669 50	.222	807 91	.018
Mar.	"	24	48,215	340	136,939 95	2.840	44,570 49	.924	34,117 98	.708	10,919 14	.226	819 27	.017
April	"	12	24,512	100	68,806 66	2.807	23,247 45	.948	16,202 83	.661	5,718 33	.233	294 38	.012
May	"	21	43,472	650	123,706 23	2.846	41,235 70	.949	32,014 34	.737	9,598 93	.221	530 82	.012
June	"	20	41,494	1260	116,732 47	2.813	39,380 96	.949	28,051 72	.676	9,426 16	.227	466 84	.011
July	"	16	32,392	1460	91,515 03	2.825	30,732 50	.949	25,007 88	.772	7,400 84	.229	375 41	.011
Aug.	"	21	36,254	960	102,725 37	2.833	34,400 45	.949	28,093 67	.775	8,409 29	.232	485 44	.013
Sept.	"	17	32,424	100	92,112 92	2.841	30,766 70	.949	25,414 38	.784	7,280 12	.225	406 52	.013
Oct.	"	20	40,808	460	115,197 52	2.823	38,759 05	.949	31,545 79	.773	9,060 27	.222	535 64	.013
Nov.	"	17	36,276	1050	102,332 19	2.821	34,485 00	.950	28,144 60	.776	8,267 20	.228	767 03	.021
Dec.	"	8	15,025	1940	42,024 90	2.797	14,287 05	.950	11,538 89	.768	3,289 19	.218	316 88	.021
Jan.	1902	17	34,870	1610	98,627 52	2.828	33,145 50	.950	29,283 30	.839	7,713 98	.221	723 22	.021
Feb.	"	12	26,997	260	76,281 29	2.826	25,629 10	.950	21,521 84	.796	6,302 42	.233	523 21	.019
Mar.	"	14	31,140	1800	87,775 59	2.818	29,582 05	.950	24,833 70	.797	6,919 13	.222	649 39	.021
April	"	15	35,615	2150	101,322 39	2.845	33,812 40	.950	29,729 77	.834	7,974 78	.224	478 92	.013
May	"	15	39,500	1655	111,206 05	2.815	37,507 90	.950	31,650 40	.801	8,755 41	.221	712 46	.018
June	"	3	7,150	1930	19,959 45	2.791	6 804 85	.950	5,533 09	.773	1,369 99	.191	65 37	.009
May	1903	9	17,627	2160	49,455 04	2.805	22,563 79	1.280	16,429 60	.932	4,107 66	.233	176 28	.010
June	"	7	16,141	1870	45,224 63	2.801	20,661 48	1.280	14,042 01	.870	3,722 17	.231	161 43	.010
July	"	2	4,309		12,108 29	2.810	5,515 52	1.280	3,878 10	.900	1,077 25	.250	74 35	.017
		1,052	1,890,235	1471	$5,351,548 73	$2.831	$1,554,461 79	$ .822	$1,489,262 34	$ .787	$423,434 03	$ .224	$24,833 73	$ .013

Delivery called for under above contract, 2,000,000 Tons

Tonnage moved by C. & O. Ry. under above contract, 1,890,235

Tonnage short for which adjustment was made by C. & O. Ry. under above contract, *88,056

Total Tonnage delivered under above contract, 1,978,291

Tonnage short under above contract, 21,709 "

*March, 1899,	982
Sept., "	1,165
Oct., "	1,208
Apr., 1900,	1,650
Dec., "	83,051

I hereby certify that the foregoing statement is correct,

L. F. SULLIVAN,
Comptroller.

Richmond, Va., 6th Nov., 1903.

Rates on Tidewater Bit. Coal beyond Capes
January 1st, 1897, to date

Date	New River	Kanawha	Guyandotte	Kentucky	Tariff Auth.	Headed to
April 10, 1895	225	250	7967		5177	N. Y.
Jan. 2, 1899	200	225	ICC 829		7967	"
" 3, 1899	see below	200	" 845		7994	"
Mar. 8, 1899	90	115	" 911		8155	News
May 13, 1899	80	105	" 1003		8407	"
Jan. 17, 1900	85	110	" 1324		9179	"
Feb. 1, 1900	100	125	" 1334		9231	"
	R.O. M. Splint		" 1347			
" " "		110	Cancelled by	9647	9322	"
April 2, 1900	115	130	ICC 1428		9647	"
May 15, 1900	115	125	" 1454		9699	"
Apr. 1, 1901	125	135	" 1726		10332	"
			Guyan.			
Oct. 21, 1902	125	135	145	ICC 2200	10850	"
				Ky.		
Jan. 12, 1903	125	135	145	" 2286	155 10932	"
April 1, 1903	135	145	155	" 2374	165 11032	"

Quinnimont
to
Hawks Nest 175
South Side Branch Headed through to New York
Loop Creek, Laurel Creek,
Kerney Creek and Hawks Nest, 180

Copy

Chesapeake … way Company.

… ent.

Exchange List
For Joint Tariff 5177.
C. C. McClain
and
Others.

RICHMOND, VA., April 10, 1895.

THROUG… T TARIFF,

Rates of Tra… ct April 15, 1895,

Via Rail to Newp… via Ocean and Vessels,

BITUMINOUS COAL,

Where in Car Loads—Minimum Weight 12 Tons—from Mines to Newport News, Va., and in Cargo Quantities, by Ocean and Vessel from Newport News to Destination, SUBJECT TO OCEAN CONTRACTS AND CHARTERS, AS ARRANGED AND ACCEPTED IN ADVANCE OF SHIPMENTS.

FROM NEW RIVER DISTRICT.

Quinnimont	W. Va.	Red Ash	W. Va.	Macdonald	W. Va.	Keeney's Creek	W. Va.	Nuttall	W. Va
Prince	"	Brooklyn	"	Echo	"	Boone	"	Fayette	"
Alaska	"	Cunard	"	Central	"	Ballanger	"	Elmo	"
Claremont	"	Harvey	"	Fire Creek	"	Masters	"	Sunnyside	"
Beechwood	"	Red Star	"	East Sewell	"	Dubree	"	Gaymont	"
Stone Cliff	"	Glen Jean	"	Sewell	"	Cavendish	"	Hawk's Nest	"
Thurmond	"	Dun Loup	"	Caperton	"	Lookout	"	Ansted	"
Rush Run	"	Turkey Knob	"						

To New York, N. Y., $2.25 per Ton 2,240 Pounds.

FROM KANAWHA DISTRICT.

Gauley	W. Va.	Crescent	W. Va.	Paint Creek	W. Va.	Ronda	W. Va.	Burdette	W. Va
Deep Water	"	Montgomery	"	Gordon's	"	Acme	"	Nicholas Road	"
Mt. Carbon	"	Union Coal Co.	"	Crown Hill	"	Peerless	"	Belva	"
Powellton Junc.	"	Con. Mining Co.	"	Belmont Coal Co.	"	Cabin Creek	"	Vaughan	"
Forrest Hill	"	Maudley	"	Blacksburg	"	Winifrede Junc.	"	Morris	"
Eagle	"	Chesapeake	"	East Bank	"	Spring Hill	"	Greendale	"
Edgewater	"	Kanawha C.C.Co.	"	Coalburg	"				

To New York, N. Y., $2.50 per Ton 2,240 Pounds.

MANIFEST SOLID THROUGH VIA NEWPORT NEWS, VA.

Above rates do not include Marine Insurance.

W. P. WALKER, Jr.,
Freight Traffic Manager.

E. D. HOTCHKISS,
General Freight Agent.

500—9—4—'95.

…THREE COPIES OF THIS TARIFF, TWO OF WHICH MUST BE POSTED IN TWO CONSPICUOUS PLACES FOR PUBLIC INSPECTION.

AUTHORITY No. 1187.

Chesapeake & Ohio Railway Company.

Traffic Department.

RICHMOND, VA., April 10, 1895.

THROUGH FREIGHT TARIFF,

No. 5177,

Rates of Transportation, taking effect April 15, 1895,

Via Rail to Newport News, Va., thence via Ocean and Vessels,

—— ON ——

BITUMINOUS COAL,

Where in Car Loads—Minimum Weight 12 Tons—from Mines to Newport News, Va., and in Cargo Quantities, by Ocean and Vessel from Newport News to Destination, SUBJECT TO OCEAN CONTRACTS AND CHARTERS, AS ARRANGED AND ACCEPTED IN ADVANCE OF SHIPMENTS.

FROM NEW RIVER DISTRICT.

Quinnimont	W. Va.	Red Ash	W. Va.	Macdonald	W. Va.	Keeney's Creek	W. Va.	Nuttall	W. Va.
Prince	"	Brooklyn	"	Echo	"	Boone	"	Fayette	"
Alaska	"	Cunard	"	Central	"	Ballanger	"	Elmo	"
Claremont	"	Harvey	"	Fire Creek	"	Masters	"	Sunnyside	"
Beechwood	"	Red Star	"	East Sewell	"	Dubree	"	Gaymont	"
Stone Cliff	"	Glen Jean	"	Sewell	"	Cavendish	"	Hawk's Nest	"
Thurmond	"	Dun Loup	"	Caperton	"	Lookout	"	Ansted	"
Rush Run	"	Turkey Knob	"						

To New York, N. Y., $2.25 per Ton 2,240 Pounds.

FROM KANAWHA DISTRICT.

Gauley	W. Va.	Crescent	W. Va.	Paint Creek	W. Va.	Ronda	W. Va.	Burdette	W. Va.
Deep Water	"	Montgomery	"	Gordon's	"	Acme	"	Nicholas Road	"
Mt. Carbon	"	Union Coal Co.	"	Crown Hill	"	Peerless	"	Belva	"
Powellton Junc.	"	Con. Mining Co.	"	Belmont Coal Co.	"	Cabin Creek	"	Vaughan	"
Forrest Hill	"	Handley	"	Blacksburg	"	Winifrede Junc.	"	Morris	"
Eagle	"	Chesapeake	"	East Bank	"	Spring Hill	"	Greendale	"
Edgewater	"	Kanawha C.C.Co.	"	Coalburg	"				

To New York, N. Y., $2.50 per Ton 2,240 Pounds.

MANIFEST SOLID THROUGH VIA NEWPORT NEWS, VA.

Above rates do not include Marine Insurance.

W. P. WALKER, Jr.,
Freight Traffic Manager.

E. D. HOTCHKISS,
General Freight Agent.

500—9—4—'95.

THREE COPIES OF THIS TARIFF, TWO OF WHICH MUST BE POSTED IN TWO CONSPICUOUS PLACES FOR PUBLIC INSPECTION.

TO BE POSTED IN TWO CONSPICUOUS PLACES AT EACH FREIGHT-SHIPPING STATION

AUTHORITY No. 1187. CHANGE: REDUCTION.	Chesapeake and Ohio Railway. JOINT FREIGHT TARIFF No. 7967. Superseding No. 5177.	I. C. C. No. 829.

JOINT FREIGHT TARIFF

OF THE

CHESAPEAKE AND OHIO RAILWAY COMPANY

ON

BITUMINOUS COAL,

I. C. C. RECEIPT No. 3003

C. & O. ADVICE No. 134

In Car Loads—Minimum Weight 12 Tons—from Mines to Newport News, Va., and in Cargo Quantities, by Vessel from Newport News to Destination, SUBJECT TO OCEAN CONTRACTS AND CHARTERS, AS ARRANGED AND ACCEPTED IN ADVANCE OF SHIPMENT.

FROM NEW RIVER DISTRICT.

MAIN LINE.		MAIN LINE—Con.		Loup Creek Branch. (Intersecting at Thurmond, W. Va.)		South Side Branch. (Intersecting at Thurmond, W. Va.)		Keeney's Creek Branch. (Intersecting at Nuttall, W. Va.)	
Quinnimont,	W. Va	Beury,	W. Va	So. Thurmond,	W. Va	Thurmond Mine,	W. Va	Boone,	W. Va
Prince,	"	Central,	"	Harvey,	"	Rush Run Mine,	"	Ballanger,	"
McKendree,	"	Fire Creek,	"	Red Star,	"	Red Ash Mine,	"	Masters,	"
Slater's,	"	East Sewell,	"	Glen Jean,	"	Brooklyn Mine,	"	Dubree,	"
Buffalo,	"	Sewell,	"	Collinsville,	"	Canard Mine,	"	Cavendish,	"
Alaska,	"	Caperton,	"	Dun Loup,	"	Brown Mine,	"	Lookout,	"
Claremont,	"	Kenney's Creek,	"	Turkey Knob,	"				
Beechwood,	"	Nuttall,	"	Macdonald,	"				
Stone Cliff,	"	Fayette,	"						
Riverview,	"	Elmo,	"						
Thurmond,	"	Sunnyside,	"						
Dimmock,	"	Caymont,	"						
Rush Run,	"	Hawk's Nest,	"						

Hawk's Nest Branch. (Intersecting at Hawk's Nest, Va.)	
Ansted,	W. Va

TO NEW YORK, N. Y., $2.00 PER TON 2240 POUNDS.

FROM KANAWHA DISTRICT.

MAIN LINE.		Main Line—Con.		Main Line—Con.		Main Line—Con.		Cabin Creek Branch. (Intersecting at Coalburg, W. Va.)		GAULEY BRANCH. Intersecting at Gauley, W. Va.)	
Gauley,	W. Va	Forrest Hill,	W. Va	Consolidated,	W. Va	Black Cat,	W. Va	Dry Branch,	W. Va	K. & M. Jct.,	W. Va
Kanawha Falls,	"	St. Clair,	"	Handley,	"	East Bank,	"	Ronda,	"	Burdette,	"
Deep Water,	"	Eagle,	"	Dego,	"	Coalburg,	"	Fairfield,	"	Nicholas Road,	"
Digby,	"	Edgewater,	"	Paint Creek,	"	Winifrede Junction,	"	Cane Fork,	"	Belva,	"
Mt. Carbon,	"	Crescent,	"	Gordon's	"	Brownstown,	"	Alum Lick,	"	Vaughan,	"
Powellton,	"	Montgomery,	"	Crown Hill,	"	Spring Hill,	"	Leewood,	"	Morris,	"
Diamond,	"	Union,	"	Belmont,	"			Acme,	"	Greendale,	"

TO NEW YORK, N. Y., $2.25 PER TON 2240 POUNDS.

Via Rail to Newport News, Va., thence via Ocean and Vessels.

MANIFEST SOLID THROUGH VIA NEWPORT NEWS, VA.

Above rates do not include Marine Insurance.

Issued Cincinnati, O., December 27, 1898. **Effective January 2, 1899.**

G. W. BENJAMIN,
General Coal Freight Agent, C. & O. Ry.,
Cincinnati, O.

Issued by
JNO. F. ORNDORFF,
Ass't General Freight Agent, C. & O. Ry.,
Cincinnati, O.

300

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TO BE POSTED IN TWO CONSPICUOUS PLACES AT EACH FREIGHT-SHIPPING STATION

AUTHORITY No. 1187.
CHANGE:
REDUCTION.

Chesapeake and Ohio Railway.
JOINT FREIGHT TARIFF No. 7994.
Superseding No. 7967.

I. C. C. No. 845.
Superseding No. 836

JOINT FREIGHT TARIFF
OF THE
CHESAPEAKE AND OHIO RAILWAY COMPANY
ON
BITUMINOUS COAL,
CAR LOADS, Minimum Weight 20 Tons,
TO NEW YORK, N. Y.

From Mines to Newport News, Va., and [illegible] Facilities, by Vessel from Newport News to Destination,
SUBJECT TO [illegible] RIGHTS AND CHARTERAS.

FROM [illegible] DISTRICT.

MAIN LINE.

Quinnimont,	W.Va
Prince,	"
McKendree,	"
Hinton,	"
Talcott,	"
Alta,	"
Thurmond,	"
Hawksnest,	"
Stone Cliff,	"
Riverview,	"
Thurmond,	"
Dunmore,	"
Rush Run,	"

MAIN LINE—Con.

Beury,	W.Va
Central,	"
Fire Creek,	"
East Sewell,	"
Sewell,	"
Cuperton,	"
Kenney's Creek,	"
Nuttall,	"
Fayette,	"
Kimo,	"
Sunnyside,	"
Caymont,	"
Hawk's Nest,	"

[illegible] Branch.

[illegible] Thurmond,	W.Va
Thurmond,	W.Va
[illegible]	W.Va
[illegible]	"
[illegible]	"
[illegible]	"
[illegible]	"

Loop Creek Branch
(Intersecting at Thurmond, W. Va.)

So. Thurmond,	W.Va
Harvey,	"
Red Star,	"
Glen Jean,	"
Collinsville,	"
Van Loup,	"
Turkey Knob,	"
Macdonald,	"
Sugar Creek,	"

Keeney's Creek Branch
(Intersecting at Nuttall, W. Va.)

Boone,	W.Va
Belanger,	"
Masters,	"
Dubree,	"
Cavendish,	"
Lookout,	"

Laurel Creek Branch

Greenwood,	W.Va
Laurel,	"
Big Q,	"

Hawk's Nest Branch
(Intersecting at Hawk's Nest, Va.)

Antrel,	W.Va

$1.75 PER TON 2240 POUNDS.

$1.60 PER TON 2240 POUNDS.

Subject to increase or reduction in accordance with prevalent rates under ocean contracts and charterers arranged and accepted in advance of shipment; shipper to have option to make his own ocean contract or charter, in which event the rail proportion of the cost of such through transportation shall be 60 percent of the above named rates of $1.75 and $1.60 to New York.

FROM KANAWHA DISTRICT.

MAIN LINE.

Dunbar,	W.Va
Kanawha Falls,	"
Deep Water,	"
Eskdale,	"
Mt. Carbon,	"
Powellton,	"
Diamond,	"

Main Line—Con.

Forest Hill,	W.Va
Big Otter,	"
Eagle,	"
Hopkins,	"
Cresent,	"
Montgomery,	"
Deen,	"

Main Line—Con.

Consolidated,	W.Va
Handley,	"
Dego,	"
Paint Creek,	"
Gordon's,	"
Crown Hill,	"
Belmont,	"

Main Line—Con.

Black Oak,	W.Va
East Bank,	"
Coalburg,	"
Winifred Junction,	"
Peytonstown,	"
Spring Hill,	"

Ohio Creek Branch.
(Intersecting at Coalburg, W. Va.)

Dry Branch,	W.Va
Reedy,	"
Fairfield,	"
Cane Fork,	"
Alum Lick,	"
Leewood,	"
Acme,	"

GAULEY BRANCH.
Intersecting at Gauley, W. Va.)

K. & M. Jct.,	W.Va
Burdette,	"
Nicholas Road,	"
Belva,	"
Vaughan,	"
Morris,	"
Grandale,	"

TO NEW YORK, N. Y., $2.00 PER TON 2240 POUNDS.

Subject to increase or reduction in accordance with prevalent rates under ocean contracts and charterers arranged and accepted in advance of shipment; shipper to have option to make his own ocean contract or charter, in which event the rail proportion of the cost of such through transportation shall be 60 percent of the above named rate of $2.00 to New York.

MANIFEST SOLID THROUGH VIA NEWPORT NEWS, VA.

Above rates do not include Marine Insurance.

Issued Cincinnati, O., December 29, 1898. Effective January 3, 1899.

G. W. BENJAMIN,
General Coal Freight Agent, C. & O. Ry.
Cincinnati, O.

JNO. F. ORNSBY,
Asst. General Freight Agent, C. & O. Ry.
Cincinnati, O.

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...CONSPICUOUS PLACES AT EACH FREIGHT-SHIPPING STATION.

Authority No.1187	CHESAPEAKE AND OHIO RY.	I.C.C.No.911
Reduction	FREIGHT TARIFF NO.8155	Superseding
	Superseding No.7994	No.845

FREIGHT TARIFF

OF THE

CHESAPEAKE AND OHIO RAILWAY COMPANY.

-:ON:-

BITUMINOUS COAL, CAR LOADS

Minimum weight 20 tons

TO

NEWPORT NEWS VA.

When destined beyond the Capes.

FROM

New River District 90 cents per ton 2240 pounds.

Kanawha District $ 1.15 per ton 2240 pounds.

3/3/99

Issued Cincinnati O. March 3,1899. Effective March 5,1899.

Under this Tariff, when freight is to be loaded by consignor or unloaded by consignee, one dollar ($1.00) per car per day, or fraction thereof, for delay beyond 48 hours in loading or unloading will be added to the rates named herein, and constitue a part of the total charges to be collected by the carrier on the property; except, however, when in conflict with Car Service Association or local regulations at shipping point or destination, in which case such Car Service Association or local regulations shall prevail.

G. W. BENJAMIN,
General Coal Freight Agent C. & O. R'y,
Cincinnati, O.

Issued by
JNO. F. ORNDORFF,
Ass't General Freight Agent C. & O. R'y,
Cincinnati, O.

The traffic Officers of the above-named Companies will certify to the Interstate Commerce Commission their concurrence in the rates herein given.

[over.]

LIST OF COAL AND COKE SHIPPING STATIONS ON CHESAPEAKE AND OHIO RY.

NEW RIVER DISTRICT.

Main Line.

Quinnimont,	W. Va.
Prince,	"
McKendree,	"
Slater's,	"
Buffalo,	"
Alaska,	"
Claremont,	"
Beechwood,	"
Stone Cliff,	"
Riverview,	"
Thurmond,	"
Dimmock,	"
Rush Run,	"
Beury,	"
Central,	"
Fire Creek,	"
East Sewell,	"
Sewell,	"
Caperton,	"
Keeney's Creek,	"
Nuttall,	"
Fayette,	"
Elmo,	"
Sunnyside,	"
Grymont,	"
Hawk's Nest,	"

Loup Creek Branch.

(Intersecting at Thurmond, W. Va.)

So. Thurmond,	W. Va.
Harvey,	"
Red Star,	"
Glen Jean,	"
Collinsville,	"
Dun Loup,	"
Turkey Knob,	"
Macdonald,	"

South Side Branch.

(Intersecting at Thurmond, W. Va.)

Thurmond Mine,	W. Va.
Rush Run Mine,	"
Red Ash Mine,	"
Brooklyn Mine,	"
Cunard Mine,	"
Brown Mine,	"

Keeney's Creek Branch.

(Intersecting at Nuttall, W. Va.)

Boone,	W. Va.
Ballanger,	"
Masters,	"
Dubree,	"
Cavendish,	"
Lookout,	"

Hawk's Nest Branch.

(Intersecting at Hawk's Nest, Va.)

Ansted,	W. Va.

KANAWHA DISTRICT.

Main Line.

Gauley,	W. Va.
Kanawha Falls,	"
Deep Water,	"
Digby,	"
Mt. Carbon,	"
Powellton,	"
Diamond,	"
Forrest Hill,	"
St. Clair,	"
Eagle,	"
Edgewater,	"
Crescent,	"

Main Line.

Montgomery,	W. Va.
Union,	"
Consolidated,	"
Handley,	"
Dego,	"
Paint Creek,	"
Gordon's,	"
Crown Hill,	"
Belmont,	"
Black Cat,	"
East Bank,	"
Coalburg,	"
Winifrede Junction,	"
Spring Hill,	"

Deep Water Branch.

(Intersecting at Deep Water, W. Va.)

Robson,	W. Va.

Cabin Creek Branch.

(Intersecting at Coalburg, W. Va.)

Dry Branch,	W. Va.
Ronda,	"
Fairfield,	"
Cane Fork,	"
Alum Lick,	"
Leewood,	"
Acme,	"

†Gauley Branch.

(Intersecting at Gauley, W. Va.)

K. & M. Junction,	W. Va.
Burdette,	"
Nicholas Road,	"
Belva,	"
Vaughan,	"
Morris,	"
Greendale,	"

BIG SANDY DIVISION.

Hatfield,	Ky.
Savage Branch,	"
Lockwood,	"
Burgess,	"
Wright's,	"
Buchanan,	"
Zelda,	"
Curnutt's,	"
Catalpa,	"

Fuller's,	Ky.
Potter's,	"
Whitt's,	"
Louisa,	"
Eloise,	"
Camp Ground,	"
Walbridge,	"
Tunnel Siding,	"
Torchlight,	"

Chapman,	Ky.
Gallup,	"
Kise,	"
George's Creek,	"
Hygeia Springs,	"
Richardson,	"
Forbes,	"
Peach Orchard	"

†Rates from stations on Gauley Branch will be 10 cents per ton higher than the rates from Kanawha District.

TO BE POSTED IN TWO CONSPICUOUS PLACES AT EACH FREIGHT-SHIPPING STATION.

Authority No.1187
Reduction

CHESAPEAKE AND OHIO RY.
FREIGHT TARIFF NO.3407
Superseding No.3155

I.C.C.No.1003
Superseding
No.911

FREIGHT TARIFF
OF THE
CHESAPEAKE AND OHIO RAILWAY COMPANY.

-:On:-

BITUMINOUS COAL, CAR LOADS

Minimum weight 20 tons.

TO

51899

NEWPORT NEWS VA.

When destined beyond the capes.

FROM

New River District	80 cents	per ton 2240 pounds.
Kanawha District	$ 1.05	per ton 2240 pounds.

Issued Cincinnati, O. May 6, 1899. Effective May 13, 1899.

Under this Tariff, when freight is to be loaded by consignor or unloaded by consignee, one dollar ($1.00) per car per day, or fraction thereof, for delay beyond 48 hours in loading or unloading, will be added to the rates named herein, and constitute a part of the total charges to be collected by the carrier on the property; except, however, when in conflict with Car Service Association or local regulations at shipping point or destination, in which case such Car Service Association or local regulations shall prevail.

G. W. BENJAMIN,
General Coal Freight Agent C. & O. R'y,
Cincinnati, O.

[OVER.]

Issued by
JNO. F. ORNDORFF,
Ass't General Freight Agent C. & O. R'y,
Cincinnati, O.

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LIST OF COAL AND COKE SHIPPING STATIONS ON CHESAPEAKE AND OHIO RY.

NEW RIVER DISTRICT.

Main Line.

Quinnimont,	W. Va.
Prince,	"
McKendree,	"
Slater's,	"
Buffalo,	"
Alaska,	"
Claremont,	"
Beechwood,	"
Stone Cliff,	"
Riverview,	"
Thurmond,	"
Dimmock,	"
Rush Run,	"
Beury,	"
Central,	"
Fire Creek,	"
East Sewell,	"
Sewell,	"
Caperton,	"
Keeney's Creek,	"
Nuttall,	"
Fayette,	"
Elmo,	"
Sunnyside,	"
Gaymont,	"
Hawk's Nest,	"

Loup Creek Branch.

(Intersecting at Thurmond, W. Va.)

So. Thurmond,	W. Va.
Harvey,	"
Red Star,	"
Glen Jean,	"
Collinsville,	"
Dun Loup,	"
Turkey Knob,	"
Macdonald,	"

South Side Branch.

(Intersecting at Thurmond, W. Va.)

Thurmond Mine,	W. Va.
Rush Run Mine,	"
Red Ash Mine,	"
Brooklyn Mine,	"
Cunard Mine,	"
Brown Mine,	"

Keeney's Creek Branch.

(Intersecting at Nuttall, W. Va.)

Boone,	W. Va.
Ballanger,	"
Masters,	"
Dubree,	"
Cavendish,	"
Lookout,	"

Hawk's Nest Branch.

(Intersecting at Hawk's Nest, Va.)

Ansted,	W. Va.

KANAWHA DISTRICT.

Main Line.

Gauley,	W. Va.
Kanawha Falls,	"
Deep Water,	"
Digby,	"
Mt. Carbon,	"
Powellton,	"
Diamond,	"
Forrest Hill,	"
St. Clair,	"
Eagle,	"
Edgewater,	"
Crescent,	"

Main Line.

Montgomery,	W Va.
Union,	"
Consolidated,	"
Handley,	"
Dego,	"
Paint Creek,	"
Gordon's,	"
Crown Hill,	"
Belmont,	"
Black Oat,	"
East Bank,	"
Coalburg,	"
Winifrede Junction	"
Spring Hill,	"

Deep Water Branch.

(Intersecting at Deep Water, W. Va.)

Robson,	W Va.

Cabin Creek Branch.

(Intersecting at Coalburg, W. Va.)

Dry Branch,	W. Va.
Rosida,	"
Fairfield,	"
Cane Fork,	"
Alum Lick,	"
Leewood,	"
Acme,	"

†Gauley Branch.

(Intersecting at Gauley, W. Va.)

K. & M. Junction,	W. Va.
Burdette,	"
Nicholas Road,	"
Belva,	"
Vaughan,	"
Morris,	"
Greendale,	"

BIG SANDY DIVISION.

Hatfield,	Ky.
Savage Branch,	"
Lockwood,	"
Burgess,	"
Wright's,	"
Buchanan,	"
Zelda,	"
Curnutt's,	"
Catalpa,	"
Fuller's,	Ky.
Potter's,	"
Whitt's,	"
Louisa,	"
Eloise,	"
Camp Ground,	"
Walbridge,	"
Tunnel Siding,	"
Torchlight,	"
Chapman,	Ky.
Gallup,	"
Kise,	"
George's Creek,	"
Hygeia Springs,	"
Richardson,	"
Forbes,	"
Peach Orchard,	"

†Rates from stations on Gauley Branch will be 10 cents per ton higher than the rates from Kanawha District.

TO BE POSTED IN TWO CONSPICUOUS PLACES AT EACH FREIGHT-SHIPPING STATION.

Supplement No.1107) CHESAPEAKE AND OHIO RY.)
(FREIGHT TARIFF NO.9179 (
Advance) Superseding No.8407) Supplement No. 1053

FREIGHT TARIFF
OF THE
CHESAPEAKE AND OHIO RAILWAY COMPANY.

-:ON:-

BITUMINOUS COAL, CAR LOADS

Minimum weight 20 tons.

TO

NEWPORT NEWS VA.

When destined beyond the capes.

FROM

New River District	85 cents	per ton 2240 pounds.
Kanawha District	$ 1.10	per ton 2240 pounds.

JAN -8 1900

Issued Cincinnati,O. January 5,1900. Effective January 17,1900.

Under this Tariff, when freight is to be loaded by consignor or unloaded by consignee, one dollar ($1.00) per car per day, or fraction thereof, for delay beyond 48 hours in loading or unloading, will be added to the rates named herein, and constitute a part of the total charges to be collected by the carrier on the property; except, however, when in conflict with Car Service Association or local regulations at shipping point or destination, in which case such Car Service Association or local regulations shall prevail.

G. W. BENJAMIN,
General Coal Freight Agent C. & O. R'y,
Cincinnati, O.

[OVER.]

Issued by
JNO. F. ORNDORFF,
Ass't General Freight Agent C. & O. R'y,
Cincinnati, O.

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LIST OF COAL AND COKE SHIPPING STATIONS ON CHESAPEAKE AND OHIO R.Y.

NEW RIVER DISTRICT.

Main Line.

Quinnimont,	W. Va.
Prince,	"
McKendree,	"
Slater's,	"
Buffalo,	"
Alaska,	"
Claremont,	"
Beechwood,	"
Stone Cliff,	"
Riverview,	"
Thurmond,	"
Dimmock,	"
Rush Run,	"
Fenry,	"
Central,	"
Fire Creek,	"
East Sewell,	"
Sewell,	"
Caperton,	"
Keeney's Creek,	"
Nuttall,	"
Fayette,	"
Elmo,	"
Sunnyside,	"
Gaymont,	"
Hawk's Nest,	"

Loup Creek Branch.

(Intersecting at Thurmond, W. Va.)

do. Thurmond,	W. Va.
Harvey,	"
Red Star,	"
Glen Jean,	"
Collinsville,	"
Dun Loup,	"
Turkey Knob,	"
Macdonald,	"

South Side Branch.

(Intersecting at Thurmond, W. Va.)

Thurmond Mine,	W. Va.
Rush Run Mine,	"
Red Ash Mine,	"
Brooklyn Mine,	"
Cunard Mine,	"
Brown Mine,	"

Keeney's Creek Branch.

(Intersecting at Nuttall, W. Va.)

Boone,	W. Va.
Ballanger,	"
Masters,	"
Dubree,	"
Cavendish,	"
Lookout,	"

Hawk's Nest Branch.

(Intersecting at Hawk's Nest, Va.)

Ansted,	W. Va.

KANAWHA DISTRICT.

Main Line.

Gauley,	W. Va.
Kanawha Falls,	"
Deep Water,	"
Digby,	"
Mt. Carbon,	"
Powellton,	"
Diamond,	"
Forrest Hill,	"
St. Clair,	"
Eagle,	"
Edgewater,	"
Crescent,	"

Main Line.

Montgomery,	W. Va.
Union,	"
Consolidated,	"
Handley,	"
Dego,	"
Paint Creek,	"
Gordon's,	"
Crown Hill,	"
Belmont,	"
Black Oak,	"
East Bank,	"
Coalburg,	"
Winifrede Junction	"
Spring Hill,	"

Deep Water Branch.

(Intersecting at Deep Water, W. Va.)

Robson,	W. Va.

Cabin Creek Branch.

(Intersecting at Coalburg, W. Va.)

Dry Branch,	W. Va.
Monda,	"
Fairfield,	"
Cane Fork,	"
Alum Lick,	"
Leewood,	"
Acme,	"

†Gauley Branch.

(Intersecting at Gauley, W. Va.)

K. & M. Junction,	W. Va.
Burdette,	"
Nicholas Road,	"
Belva,	"
Vaughan,	"
Morris,	"
Greendale,	"

BIG SANDY DIVISION.

Hatfield,	Ky.
Savage Branch,	"
Lockwood,	"
Burgess,	"
Wright's,	"
Buchanan,	"
Zelda,	"
Curnutt's,	"
Catalpa,	"

Fuller's,	Ky.
Foster's,	"
Whitt's,	"
Louisa,	"
Eloise,	"
Camp Ground,	"
Walbridge,	"
Tunnel Siding,	"
Torchlight,	"

Chapman,	Ky.
Greenup,	"
Ross,	"
George's Creek,	"
Hygeia Springs,	"
Richardson,	"
Fortune,	"
Peach Orchard,	"

†Rates from stations on Gauley Branch will be 10 cents per ton higher than the rates from Kanawha District.

TO BE POSTED IN TWO CONSPICUOUS PLACES AT EACH FREIGHT-SHIPPING STATION.

[redacted]ity No.1107) CHESAPEAKE AND OHIO RY.) I.C.C.No.1554
(FREIGHT TARIFF No.9231 (Superseding
Advance) Superseding No.9179) No.1324

FREIGHT TARIFF
OF THE
CHESAPEAKE AND OHIO RAILWAY COMPANY.

-:ON:-

BITUMINOUS COAL, CAR LOADS

Minimum weight 20 tons.

TO

NEWPORT NEWS VA.

When destined beyond the capes.

FROM

JAN 18 1900

New River District	$ 1.00 cents per ton 2240 pounds.
Kanawha District	$ 1.25 "

Issued Cincinnati, O. January 12, 1900. Effective February 1, 1900.

Under this Tariff, when freight is to be loaded by consignor or unloaded by consignee, one dollar ($1.00) per car per day, or fraction thereof, for delay beyond 48 hours in loading or unloading, will be added to the rates named herein, and constitute a part of the total charges to be collected by the carrier on the property; except, however, when in conflict with Car Service Association or local regulations at shipping point or destination, in which case such Car Service Association or local regulations shall prevail.

G. W. BENJAMIN,
General Coal Freight Agent C. & O. R'y,
Cincinnati, O.

[OVER.]

Issued by
JNO. F. ORNDORFF,
Ass't General Freight Agent C. & O. R'y,
Cincinnati, O.

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LIST OF COAL AND COKE SHIPPING STATIONS ON CHESAPEAKE AND OHIO RY.

NEW RIVER DISTRICT.

Main Line.

Quinnimont, W. Va.
Prince, "
McKendree, "
Slaters, "
Buffalo, "
Alaska, "
Claremont, "
Beechwood, "
Stone Cliff, "
Riverview, "
Thurmond, "
Dimmock, "
Rush Run, "
Beury, "
Central, "
Fire Creek, "
East Sewell, "
Sewell, "
Caperton, "
Keeney's Creek, "
Nuttall, "
Fayette, "
Elmo, "
Sunnyside, "
Gaymont, "
Hawk's Nest, "

Loup Creek Branch.

(Intersecting at Thurmond, W. Va.)

So. Thurmond, W. Va.
Harvey, "
Red Star, "
Glen Jean, "
Collinsville, "
Dun Loup, "
Turkey Knob, "
Macdonald, "

South Side Branch.

(Intersecting at Thurmond, W. Va.)

Thurmond Mine, W. Va.
Rush Run Mine, "
Red Ash Mine, "
Brooklyn Mine, "
Quinnard Mine, "
Brown Mine, "

Keeney's Creek Branch.

(Intersecting at Nuttall, W. Va.)

Boone, W. Va.
Ballengee, "
Masters, "
Dubree, "
Cavendish, "
Lookout, "

Hawk's Nest Branch.

(Intersecting at Hawk's Nest, W. Va.)

Ansted, W. Va.

KANAWHA DISTRICT.

Main Line.

Gauley, W. Va.
Kanawha Falls, "
Deep Water, "
Digby, "
Mt. Carbon, "
Powellton, "
Diamond, "
Forrest Hill, "
St. Clair, "
Eagle, "
Edgewater, "
Crescent, "

Main Line.

Montgomery, W. Va.
Union, "
Consolidated, "
Handley, "
Dego, "
Paint Creek, "
Gordons, "
Crown Hill, "
Belmont, "
Black Oak, "
East Bank, "
Coalburg, "
Winifrede Junction "
Spring Hill, "

Kelly Creek Branch.

(Intersecting at Deep Water, W. Va.)

Robbins, W. Va.

Kelly Creek Branch.

(Intersecting at [illegible])

Dry Branch, W. Va.
Rocky, "
Fairdale, "
Cane Rock, "
Alum Lick, "
Leewood, "
Kemp, "

†Gauley Branch.

(Intersecting at Gauley, W. Va.)

K. & M. Junction, W. Va.
Burdette, "
Nicholas Road, "
Belva, "
Vaughan, "
Morris, "
Greendale, "

BIG SANDY DIVISION.

Hatfield, Ky.
Savage Branch, "
Lockwood, "
Burgess, "
Wrights, "
Buchanan, "
Zelda, "
Curnutte, "
Catalpa, "

Fullers, Ky.
Potters, "
Whitt's, "
Louisa, "
Eloise, "
Camp Ground, "
Walbridge, "
Tunnel Siding, "
Torchlight, "

Chapman, Ky.
Gallup, "
Kiser, "
George's Creek, "
Hygeia Springs, "
Richardson, "
Turpen, "
Peach Orchard, "

†Rates from stations on Gauley Branch will be 10 cents per ton higher than the rates from Kanawha District.

TO BE POSTED IN TWO CONSPICUOUS PLACES IN EACH FREIGHT SHIPPING STATION

Authority No.1187	CHESAPEAKE AND OHIO RY	I.C.C.No.1454
Reduction	FREIGHT TARIFF NO.9699	
	Superseding No.9647.	Superseding No.1428

FREIGHT TARIFF

OF THE

CHESAPEAKE AND OHIO RAILWAY COMPANY

-:ON:-

BITUMINOUS COAL - CAR LOADS

Minimum Weight 20 tons

MAILED FROM
TARIFF BUREAU, C. & O. RY.
MAY 8 1900
Mail Clerk.

TO

NEWPORT NEWS VA.

When destined beyond the capes

FROM

New River District	$1.15 cents per ton 2240 pounds.
Kanawha District	$1.25 "

(F.M.W.Telegram May 3, File 70536)

Issued Richmond, Va. May 8, 1900. Effective May 15, 1900.

Under this Tariff, when freight is to be reloaded by consignor or unloaded by consignee, one dollar ($1.00) per car per day, or fraction thereof, for delay beyond 48 hours in loading or unloading, will be added to the rates named herein, and constitute a part of the total charges to be collected by the carrier on the property; except, however, when in conflict with Car Service Association, or local regulations applying policy or demurrage, in which case such Car Service Association or local regulations shall prevail.

F. M. WHITAKER,
Freight Traffic Manager, C. & O. R'y,
Cincinnati, O.

E. D. HOTCHKISS,
General Freight Agent, C. & O. R'y,
Richmond, Va.

Issued by
GEO. F. ORNDORFF,
Asst. General Freight Agent, C. & O. R'y,
Richmond, Va.

(OVER)

LIST OF COAL AND COKE SHIPPING STATIONS ON CHESAPEAKE AND OHIO RY.

NEW RIVER DISTRICT.

Main Line.

Quinnimont,	W. Va.
Prince,	"
McKendree,	"
Slater,	"
Buffalo,	"
Alaska,	"
Claremont,	"
Beechwood,	"
Stone Cliff,	"
Thurmond,	"
Dimmock,	"
Beury,	"
Central,	"
Fire Creek,	"
East Sewell,	"
Sewell,	"
Caperton,	"
Keeney's Creek,	"
Nuttall,	"
Fayette,	"
Masterson,	"
Elmo,	"
Sunnyside,	"
Gaymont,	"
Hawk's Nest,	"

Loup Creek Branch.

(Intersecting at Thurmond, W. Va.)

Harvey,	W. Va.
Red Star,	"
Glen Jean,	"
Sun,	"
Dun Loup,	"
Turkey Knob,	"
Macdonald,	"

South-Side Branch.

(Intersecting at Thurmond, W. Va.)

Arbuckle,	W. Va.
Thurmond Mine,	"
Rush Run Mine,	"
Red Ash Mine,	"
Brooklyn Mine,	"
Cunard Mine,	"
South Caperton,	"
Brown Mine,	"
Kaymoor Mines,	"

Keeney's Creek Branch.

(Intersecting at Nuttall, W. Va.)

Boone,	W. Va.
Ballanger No. 2,	"
Ballanger,	"
Masters,	"
Dubree,	"
Cavendish,	"
Lookout,	"

Hawk's Nest Branch.

(Intersecting at Hawk's Nest, W. Va.)

Ansted,	W. Va.

Cincinnati Division.

Riverton,	Ky.

KANAWHA DISTRICT.

Main Line.

Gauley,	W. Va.
Kanawha Falls,	"
Deep Water,	"
Digby,	"
Mt. Carbon,	"
Diamond,	"
Forrest Hill,	"
St. Clair,	"
Eagle,	"
Edgewater,	"
Crescent,	"
Montgomery,	"
Union,	"
Consolidated,	"
Handley,	"
Chesapeake,	"
Dego,	"

Main Line.

Paint Creek,	W. Va.
Crown Hill,	"
Belmont,	"
Black Cat,	"
East Bank,	"
Coalburg,	"
Cabin Creek,	"
Winifrede Junction,	"
Brownstown,	"
Spring Hill,	"

Deep Water Branch.

(Intersecting at Deep Water, W. Va.)

Robson,	W. Va.

Cabin Creek Branch.

(Intersecting at Coalburg, W. Va.)

Dry Branch,	W. Va.
Ronda,	"
Fairfield,	"
Cane Fork,	"
Alum Lick,	"
Leewood,	"
Acme,	"

Gauley Branch.

(Intersecting at Gauley, W. Va.)

K. & M. Junction,	W. Va.
Nicholas Road,	"
Belva,	"
Vaughan,	"
Greendale,	"

Huntington Division.

Ashland,	Ky.

Lexington Division.

Kilgore,	Ky.
Music,	"
Strait Creek Mines,	"
Mt. Savage,	"
E. K. Junction,	"

BIG SANDY DIVISION.

Hatfield,	Ky.
Savage Branch,	"
Lockwood,	"
Burgess,	"
Wrights,	"
Buchanan,	"
Zelda,	"
Curnutts,	"
Catalpa,	"

Fullers,	Ky.
Potters,	"
Louisa,	"
Eloise,	"
Tunnel Siding,	"
Walbridge,	"
Torchlight,	"
Chapman,	"
Gallup,	"

Kise,	Ky.
George's Creek,	"
Hygeia Springs,	"
Richardson,	"
Forbes,	"
Peach Orchard,	"
White House,	"

(ty No.1167) CHESAPEAKE AND OHIO RY.)
( ) (I.C.C.No.1347
(New Rate) FREIGHT TARIFF NO.9322)

FREIGHT TARIFF
OF THE
CHESAPEAKE AND OHIO RAILWAY COMPANY.

-:OIL:-

RUN OF MINE SPLINT COAL - CAR LOADS

Minimum weight 20 tons,

TO

JAN 27 1900

NEWPORT NEWS VA.

When destined beyond the capes.

FROM

KANAWHA DISTRICT

1.10 per ton 2240 pounds.

Issued Cincinnati,O. January 25,1900. Effective February 2,1900.

Under this Tariff, when freight is to be loaded by consignor or unloaded by consignee, one dollar ($1.00) per car per day, or fraction thereof, for delay beyond 48 hours in loading or unloading, will be added to the rates named herein, and constitute a part of the total charge to be collected by the carrier on the property; except, however, when in conflict with Car Service Association or local regulations at shipping point or destination, in which case Car Service Association or local regulations shall prevail.

G. W. BENJAMIN,
General Coal Freight Agent C. & O. R'y,
Cincinnati, O.

[over.]

Issued by
JNO. F. ORNDORFF,
Asst General Freight Agent C. & O. R'y,
Cincinnati, O.

66

LIST OF COAL AND COKE SHIPPING STATIONS ON CHESAPEAKE AND OHIO [illegible]

NEW RIVER DISTRICT.

Main Line.

Quinnimont, W. Va.
Prince, "
McKendree, "
Slater's, "
Buffalo, "
Alaska, "
Claremont, "
Beechwood, "
Stone Cliff, "
Riverview, "
Thurmond, "
Dimmock, "
Rush Run, "
Beury, "
Central, "
Tire Creek, "
East Sewell, "
Sewell, "
Caperton, "
Keeney's Creek, "
Nuttall, "
Fayette, "
Elmo, "
Sunnyside, "
Gaymont, "
Hawk's Nest, "

Loup Creek Branch.

(Intersecting at Thurmond, W. Va.)

So. Thurmond, W. Va.
Harvey, "
Red Star, "
Glen Jean, "
Collinsville, "
Dun Loup, "
Turkey Knob, "
Macdonald, "

South Side Branch.

(Intersecting at Thurmond, W. Va.)

Thurmond Mine, W. Va.
Rush Run Mine, "
Red Ash Mine, "
Brooklyn Mine, "
Cunard Mine, "
Brown Mine, "

Keeney's Creek Branch.

(Intersecting at Nuttall, W. Va.)

Boone, W. Va.
Ballanger, "
Masters, "
Dubree, "
Cavendish, "
Lookout, "

Hawk's Nest Branch.

(Intersecting at Hawk's Nest, W. Va.)

Amzed, W. Va.

KANAWHA DISTRICT.

Main Line.

Gauley, W. Va.
Kanawha Falls, "
Deep Water, "
Digby, "
Mt. Carbon, "
Powellton, "
Diamond, "
Forrest Hill, "
St. Clair, "
Eagle, "
Edgewater, "
Crescent, "

Main Line.

Montgomery, W. Va.
Union, "
Consolidated, "
Handley, "
Dego, "
Paint Creek, "
Gordon's, "
Crown Hill, "
Belmont, "
Black Gal, "
East Bank, "
Coalburg, "
Winifrede Junction, "
Spring Hill, "

Deep Water Branch.

(Intersecting at Deep Water, W. Va.)

Boiger, W. Va.

Paint Creek Branch.

(Intersecting at Gordon's, W. Va.)

Dry Branch, W. Va.
Kanda, "
Fairdale, "
Oak Hill, "
Alum Lick, "
Lockwood, "
Acme, "

Gauley Branch.

(Intersecting at [illegible])

[illegible] Junction, W. Va.
[illegible] Branch, "
[illegible], "
[illegible], "

BIG SANDY DIVISION.

Hatfield, Ky.
Savage Branch, "
Lockwood, "
Burgess, "
Wright's, "
Buchanan, "
Zelda, "
Current's, "
Catalpa, "

Falk's, Ky.
Potter's, "
White's, "
Louise, "
Eloise, "
Camp Ground, "
Wallridge, "
Tunnel Siding, "
Torchlight, "

Chapman, Ky.
Galling, "
Kite, "
George's Creek, "
Hygeia Springs, "
Richardson, "
Forbes, "
Peach Orchard, "

†Rates from stations on Gauley Branch will be 10 cents per ton higher than the rates from Kanawha District.

TO BE POSTED IN TWO CONSPICUOUS PLACES AT EACH FREIGHT SHIPPING STATION

Authority No.1187	:CHESAPEAKE & OHIO RAILWAY	: I.C.C. No.1726
	: FREIGHT TARIFF NO. I0332	:
(F.M.W. No.81117):	Superseding No.9699	: Superseding No.1454

FREIGHT TARIFF
OF THE CHESAPEAKE AND OHIO RAILWAY COMPANY

-: ON :-

BITUMINOUS COAL, CARLOADS.

Minimum weight 20 tons.

-: TO :-

NEWPORT NEWS, VA.

When destined beyond the Capes.

-: FROM :-

New River Daitrict

$ I.25 per ton of 2240 pounds.

Kanawha District.

$I.35 per ton of 2240 pounds.

Issued Richmond,Va. March 20,1901. Effective April 1, 1901:

Under this Tariff, when freight is to be loaded by consignee or unloaded by consignee, one dollar ($1.00) per car per day, or fraction thereof, for delay beyond 48 hours in loading or unloading, will be added to the rates named herein, and constitute a part of the total charges to be collected by the carrier on the property; except, however, when in conflict with Car Service Association or local regulations at shipping point or destination, in which case such Car Service Association or local regulations shall prevail.

F. M. WHITAKER,
Freight Traffic Manager, C. & O. R'y,
Richmond, Va.

E. D. HOTCHKISS,
General Freight Agent, C. & O. R'y,
Richmond, Va.

Issued by
JNO. F. ORNDORFF,
Ass't General Freight Agent, C. & O. R'y,
Richmond, Va.

Agent's Tariff No. 1187	Chesapeake and Ohio Railway	
	FREIGHT TARIFF NO. I0850	I C C No. 3200
	Superseding No. I0332	Superseding No. 1726
Tom Tate		

FREIGHT TARIFF

OF THE

CHESAPEAKE AND OHIO RAILWAY COMPANY

ON

BITUMINOUS COAL, CARLOADS

Minimum weight 15 Tons

TO

Newport News, Va.

When destined beyond the Capes

RATES

[illegible] $1.25 per ton 2240 pounds

[illegible] $1.35 per ton 2240 pounds

[illegible] $1.40 per ton 2240 pounds

[illegible] Effective Oct. 21st, 1902

Under this Tariff, when freight is to be loaded by consignee or unloaded by consignee, one dollar ($1.00) per car per day, or fraction thereof, for delay beyond 24 hours in loading or unloading, will be added to the rates named herein, and constitute a part of the total charges to be collected by the carrier on the property; except, however, when in conflict with Car Service Association or local regulations at shipping point or destination, in which case such Car Service Association or local regulations shall prevail.

Issued by

F. M. WHITAKER,
Freight Traffic Manager, C. & O. R'y,
Richmond, Va.

E. D. HOTCHKISS,
General Freight Agent, C. & O. R'y,
Richmond, Va.

[illegible] CONDORFF,
Asst. General Freight Agent, C. & O. R'y,
Richmond, Va.

(OVER.)

LIST OF COAL AND COKE SHIPPING STATIONS ON THE CHESAPEAKE AND OHIO RAILWAY.

NEW RIVER DISTRICT.

Huntington Division.

Quinnimont ..... W Va
Prince ..... "
McKendree ..... "
*Thayer ..... "
*Alaska ..... "
*Beechwood ..... "
Stone Cliff ..... "
Thurmond ..... "
*Big Bend ..... "
*Beury ..... "
*Central ..... "
Fire Creek ..... "
*East Sewell ..... "
Sewell ..... "
Caperton ..... "
*Keeneys Creek ..... "
Nuttall ..... "
Fayette ..... "
*Newlyn ..... "
*Masterson ..... "
*Elmo ..... "
*Sunnyside ..... "
*Gaymont ..... "
Hawks Nest ..... "

Laurel Creek Branch.

Via Quinnimont, W. Va.

*Quinnimont Mines ..... W Va
*Robbins ..... "
*Laurel Creek ..... "
*Big "Q" ..... "
*Greenwood ..... "

Piney Creek Branch.

Via Prince, W. Va.

*Royal ..... W Va
*Pack ..... "
*Gaston ..... "
*White Stick ..... "
*Wheeley ..... "
Raleigh ..... "

Loup Creek Branch.

Via Thurmond, W. Va.

So. Thurmond ..... W Va
*Sutphin ..... "
*Bissell ..... "
*Red Star ..... "
Glen Jean ..... "
*White Oak Jct. ..... "
*Sun ..... "
*Collinsville ..... "
*Derryhale ..... "
*Dun Loup ..... "
*Turkey Knob ..... "
Macdonald ..... "

White Oak Branch.

Via Thurmond and White Oak Jct., W. Va.

*Scarbro ..... W Va
*Carlisle ..... "

South Side Branch.

Via Thurmond, W. Va.

*Rend ..... W Va
*Thurmond Mine ..... "
*Rush Run Mine ..... "
*Red Ash ..... "
*Brooklyn ..... "
*Cunard ..... "
*South Caperton ..... "
*Brown ..... "
*Kaymoor ..... "

Keeneys Cr. Branch.

Via Nuttall, W. Va.

*Boone ..... W Va
*Ballanger ..... "
*Masters ..... "
*Dubree ..... "
*Cavendish ..... "
*Lookout ..... "

Hawks Nest Branch.

Via Hawks Nest, W. Va.

Ansted ..... W Va

KANAWHA DISTRICT.

Huntington Division.

Gauley ..... W Va
Kanawha Falls ..... "
Deep Water ..... "
*Digby ..... "
Mt. Carbon ..... "
*Diamond ..... "
*Forest Hill ..... "
*St. Clair ..... "
Eagle ..... "
*Edgewater ..... "
*Crescent ..... "
Montgomery ..... "
*Union ..... "
*Consolidated ..... "
Handley ..... "

Huntington Div.—Con.

*Chesapeake ..... W Va
*Pratt ..... "
Paint Creek ..... "
*Crown Hill ..... "
*Belmont ..... "
*Black Oak ..... "
East Bank ..... "
Coalburg ..... "
*Ohelyan ..... "
Winifrede Jct. ..... "
Marmet ..... "
*Carkin ..... "
Malden ..... "
*Black Band ..... "
Spring Hill ..... "

Gauley Branch.

Via Gauley, W. Va.

*K. & M. Jct. ..... W Va
Belva ..... "
*Bell Creek ..... "
*Vaughan ..... "
*Greendale ..... "

Deep Water Branch.

Via Deep Water, W. Va.

*Robeson ..... W Va

Paint Creek Branch.

Via Pratt, W. Va.

*Scales ..... W Va
*Mucklow ..... "
*Four Mile ..... "

Cabin Creek Branch.

Via Coalburg, W. Va.

*Dry Branch ..... W Va
*Ronda ..... "
*Fairfield ..... "
*Coal Fork ..... "
*Cane Fork ..... "
*Altum Lick ..... "
*Leewood ..... "
Acme ..... "
*Empire ..... "

GUYANDOT DISTRICT.

Huntington Division.

St. Albans ..... W Va
*Lewis ..... "
Scary ..... "
Scott ..... "
Teays ..... "
Hurricane ..... "

Huntington Div.—Con.

*Kibler ..... W Va
Culloden ..... "
*Walton ..... "
Milton ..... "
Ona ..... "
Barboursville ..... "

Guyandot Valley Branch.

Via Barboursville, W. Va.

*Elmwood ..... W Va
*Ines ..... "
*Roach ..... "
*Salt Rock ..... "

Guyandot Val. Br.—Con.

*West Hamlin ..... W Va
*Sheridan ..... "
*Hadley ..... "
Midkiff ..... "

KENTUCKY DISTRICT.

Huntington Division.

Catlettsburg ..... Ky
*Chaffee ..... "
*Normal ..... "
*Clyffeside ..... "
*Hermann ..... "
*Norton ..... "

Huntington Div.—Con.

Ashland ..... Ky
*Ashland Junc. ..... "
*Bellefonte ..... "
*Amanda ..... "

Kentucky Division.

Russell ..... Ky
*Wurtland ..... "
Riverton ..... "
Peach Orchard ..... "
*Richardson ..... "
*Torchlight ..... "
Louisa ..... "

Kentucky Div—Con.

White House ..... Ky
*Hammond ..... "
*Strait Creek Mines ..... "
*Mt. Savage ..... "
E. K. Junction ..... "
*Corey ..... "

*No Agent.

Authority No. 1187 Reissue and	Chesapeake and Ohio Railway FREIGHT TARIFF NO. I0932 Superseding No I0850	I C C No 2286 Superseding No 220

FREIGHT TARIFF

OF THE

CHESAPEAKE & OHIO RAILWAY COMPANY

On

BITUMINOUS COAL, CAR LOADS

Freight charges to be assessed on basis of actual weight as ascertained by track scales at regular coal weighing points, subject to a minimum of 15 tons per car.

To

Newport News, Va.

When destined beyond the Capes

From

New River District	$1.25 per ton 2240 pounds
Kanawha District	$1.35 per ton 2240 pounds
Guyandotte District	$1.45 per ton 2240 pounds
Kentucky District	$1.55 per ton 2240 pounds

See Circular No. 1540, I C C No. 2255 for grouping of coal districts

Expires March 31st, 1903

Issued Richmond, Va. Jan. 12th, 1903 Effective Jan. 12th, 1903

Under this Tariff, when freight is to be loaded by consignor or unloaded by consignee, one dollar ($1.00) per car per day, or fraction thereof, for delay beyond 48 hours in loading or unloading, will be added to the rates named herein, and constitute a part of the total charges to be collected by the carrier on the property; except, however, when in conflict with Car Service Association or local regulations at shipping point or destination, in which case such Car Service Association or local regulations shall prevail.

F. M. WHITAKER,
Freight Traffic Manager, C. & O. R'y,
RICHMOND, VA.

Issued by
[illegible]
A. G. F. A., Richmond, Va.

Issued by
E. D. HOTCHKISS,
General Freight Agent, C. & O. R'y,
RICHMOND, VA.

L. H. JONES & SON PRINT, RICHMOND, VA.

[OVER.]

LIST OF COAL AND COKE SHIPPING STATIONS ON THE CHESAPEAKE AND OHIO RAILWAY.

NEW RIVER DISTRICT.

Huntington Division.

Quinnimont ..... W Va
Prince ..... "
McKendree ..... "
*Thayer ..... "
*Alaska ..... "
*Beechwood ..... "
Stone Cliff ..... "
Thurmond ..... "
*Big Bend ..... "
*Beury ..... "
*Central ..... "
Fire Creek ..... "
*East Sewell ..... "
Sewell ..... "
Caperton ..... "
*Keeneys Creek ..... "
Nuttall ..... "

Huntington Div.—Con.

Fayette ..... W Va
*Newlyn ..... "
*Michigan ..... "
*Elmo ..... "
*Sunnyside ..... "
*Garmont ..... "
Hawks Nest ..... "

Piney Creek Branch,
Via Prince, W. Va.

*Royal ..... W Va
*Gaston ..... "
*Stonewall ..... "
*Stansford ..... "
*Whorley ..... "
Raleigh ..... "

Loup Creek Branch,
Via Thurmond, W. Va.

*So. Thurmond ..... W Va
*Sutphin ..... "
*Bissell ..... "
*Prudence ..... "
*Red Star ..... "
Glen Jean ..... "
*White Oak Jct. ..... "
*Sun ..... "
*Collingville ..... "
*Derryhale ..... "
*Dun Loup ..... "
*Turkey Knob ..... "
Macdonald ..... "

White Oak Branch,
Via Thurmond and White Oak Jct., W. Va.

*Scarbro ..... W Va
*Carlisle ..... "

South Side Branch,
Via Thurmond, W. Va.

*Bend ..... W Va
*Thurmond Mine ..... "
*Rush Run Mine ..... "
*Red Ash ..... "
*Brooklyn ..... "
*Cunard ..... "
*South Caperton ..... "
*Brown ..... "
*Raymoor ..... "

Keeneys Cr. Branch,
Via Nuttall, W. Va.

*Boone ..... W Va
*Ballenger ..... "
*Masters ..... "
*Dubree ..... "
*Cavendish ..... "
*Lookout ..... "

Hawks Nest Branch,
Via Hawks Nest, W. Va.

Ansted ..... W Va

KANAWHA DISTRICT.

Huntington Division.

Gauley ..... W Va
Kanawha Falls ..... "
Deep Water ..... "
*Rigby ..... "
Mt. Carbon ..... "
*Diamond ..... "
*Forest Hill ..... "
*St. Clair ..... "
Eagle ..... "
*Edgewater ..... "
*Crescent ..... "
Montgomery ..... "
*Consolidated ..... "
Handley ..... "
*Chesapeake ..... "

Huntington Div.—Con.

Pratt ..... W Va
Paint Creek ..... "
Crown Hill ..... "
*Belmont ..... "
*Black Oak ..... "
East Bank ..... "
Coalburg ..... "
Cabin ..... "
Winifrede Jct. ..... "
Marmet ..... "
*Cabin Creek ..... "
Marden ..... "
*Black Band ..... "
Dana ..... "

Gauley Branch,
Via Gauley, W. Va.

*E. & M. Jct. ..... W Va
Selva ..... "
*Bell Creek ..... "
*Vaughan ..... "
*Greendale ..... "

Deep Water Branch,
Via Deep Water, W. Va.

*Robson ..... W Va

Paint Creek Branch,
Via Pratt, W. Va.

*Scales ..... W Va
*Mucklow ..... "

Cabin Creek Branch,
Via Coalburg, W. Va.

*Dry Branch ..... W Va
*Ronda ..... "
*Fairfield ..... "
*Coal Fork ..... "
*Alum Lick ..... "
*Leewood ..... "
Acme ..... "
*Empire ..... "

SCIOTO DISTRICT.

Huntington Division.

St. Albans ..... W Va
*Lewis ..... "
Soaft ..... "
Scott ..... "
Tears ..... "
Hurricane ..... "

Huntington Div.—Con.

Milton ..... W Va
Ona ..... "
Barboursville ..... "

Sciotoville Branch,
Via Sciotoville, W. Va.

*Limwood ..... W Va
*Imes ..... "
*Salt Rock ..... "
West Hamlin ..... "

Sciotoville Br.—Con.

*Sheridan ..... W Va
*Hadley ..... "
*Hill ..... "
Midkiff ..... "

KENTUCKY DISTRICT.

Huntington Division.

Catlettsburg ..... Ky
*Ohio ..... "
Norton ..... "
Olympian ..... "
Ironton ..... "

Huntington Div.—Con.

*Ashland Junc. ..... Ky
*Bellefonte ..... "
*Amanda ..... "

Kentucky Division.

Sewell ..... Ky
*Worland ..... "
Riverton ..... "
Louisa ..... "
*Moonlight ..... "
*Richardson ..... "
Peach Orchard ..... "

Kentucky Div.—Con.

Grand Rapids ..... Ky
*Hammond ..... "
*Steele Creek Mines ..... "
*Mt. Savage ..... "
K. K. Junction ..... "
*Corey ..... "

Supplement No. 1187	Chesapeake and Ohio Railway: FREIGHT TARIFF NO 11032 Superseding No. I0932	I C C No 2374
Change; Advance		Superseding No 2386

FREIGHT TARIFF
OF THE CHESAPEAKE AND OHIO RAILWAY COMPANY

ON

BITUMINOUS COAL, CAR LOADS

Freight charges to be assessed on basis of actual weight as ascertained by track scales at regular coal weighing points, subject to a minimum of 15 tons per car.

TO

Newport News, Va.

When destined beyond the pages

From

New River District	$1.35 per ton of 2240 pounds
Kanawha District	$1.45 per ton of 2240 pounds
Guyandotte District	$1.55 per ton of 2240 pounds
Kentucky District	$1.65 per ton of 2240 pounds

See Circular No. 1557, I C C No 2380 Grouping of Coal Districts

(Expires March 31st, 1908.

Issued Richmond, Va., [illegible] 1907, Effective April 1st, 1907

The amount of any loss or damage for which the carrier becomes liable shall be computed on the basis of the value of the property at the time and place of shipment, unless a lower value has been agreed upon.

Under this Tariff, when freight is to be [illegible] by consignee, demurrage will be charged at the rate of [illegible] per car per day, or fraction thereof, for delay beyond 48 hours (excluding Sundays and holidays), will be added to the [illegible] charges, and constitute a part of the total charges to be collected by the carrier on the property; except, however, where in connection with [illegible] or local regulations at the shipping point or destination, in which case such other provisions or local regulations shall prevail.

F. M. WHITAKER,
Freight Traffic Manager, C. & O. Ry.,
Richmond, Va.

E. D. HOTCHKISS,
General Freight Agent, C. & O. Ry.,
Richmond, Va.

Issued by
JNO. F. ORNDORFF,
Asst General Freight Agent, C. & O. Ry.,
Richmond, Va.

ACT CONCERNING CORPORATIONS,

Approved Extra Session 1902-3, p. 480.

Sec. 47. Any railroad corporation of this State, now existing, or that may hereafter be organized, shall have power, when authorized by its board of directors, to guarantee or to become surety in respect of bonds or other obligations, or either, of other corporations (whether incorporated within or without this State), organized for the purpose or having the power, either by ownership of stock or otherwise, to own or to become interested in, or to carry on a transportation business by land or by water, or other business from which such railroad corporation shall seek to derive traffic.

Chap. 267.—An Act to authorize the Chesapeake and Ohio railway company to acquire or acquire an interest in extensions and additions to its system of railroads within and without this state, and to acquire, hold, or guarantee the stock and bonds, or either, of other corporations.

Approved February 16, 1901.

1. Be it enacted by the general assembly of Virginia, That in addition to the powers which it now possesses, the Chesapeake and Ohio railway company shall have, and from time to time, as occasion arises, may exercise the following powers, or any of them—viz:

(a) That with the approval of its stockholders by a resolution adopted at a meeting by the affirmative vote of those owning or representing at least three-fourths of the entire capital stock of the company, it may from time to time lease, use, operate, consolidate with itself or purchase or otherwise acquire any railroad or other transportation company now or hereafter incorporated under the laws of the state of Virginia, or by the laws of the United States, or any of the states thereof, or any one or more of such railroad or transportation companies, or any other railroad or transportation company or companies

which are now or hereafter may be leased, or used, or operated by, or consolidated with any one or more of such railroad or transportation companies; and from time to time it may consolidate with its capital stock, property and franchises, by change of name or otherwise, the capital stock, property and franchise of any other railroad or transportation company, power being hereby granted to any railroad or transportation company or companies incorporated by or under any act or acts of the general assembly of the state of Virginia, by a resolution of its stockholders, adopted at a meeting by the affirmative vote of those owning or representing at least three-fourths of the entire capital stock of the company, to make and carry out such contracts of consolidation or lease, sale or other method of acquisition: provided that in all consolidations a copy of the agreement therefor shall be filed in the office of the secretary of the commonwealth of Virginia, and that any corporation of this state with which said Chesapeake and Ohio railway company may consolidate, or which it may lease, shall remain subject to the jurisdiction of the courts of this state; and all lines of railroad operated by it in the state of Virginia shall be subject to the general laws of this state; and, provided further, that any stockholder of such railroad or transportation company incorporated under the laws of the state of Virginia, other than the Chesapeake and Ohio railway company, who dissents from any such consolidation may within sixty days thereafter apply by petition to the circuit court of the city of Richmond to determine the value of his stock, and shall be entitled to receive from said Chesapeake and Ohio railway company the value as thus determined of such stock upon transfer thereof to the said Chesapeake and Ohio railway company.

(b) The Chesapeake and Ohio railway company may from time to time purchase, own and hold bonds or other evidences of debt and the shares of capital stock of any corporation or corporations organized under the laws of this or any other state or of the United States for the construction or operation of any railroad or other means of transportation, and may from time

to time guarantee or assume the bonds, evidences of indebtedness or capital stock of any such corporation or corporations.

2. All taxes and debts due or to become due the commonwealth of Virginia by the said Chesapeake and Ohio railway company shall be paid in lawful money of the United States and not in coupons.

3. This Act shall be in force from its passage.

Chap. 206.—An Act to enable the Chesapeake and Ohio Railway Company to acquire, or acquire an interest in, extensions, or additions to its system of railroad outside this State, and to create stock and deeds of trust or mortgages, or to guarantee bonds for that purpose.

Approved February 13, 1890.

1. Be it enacted by the General Assembly of Virginia, That for the purpose of extending the system of railroads owned or operated by it, the Chesapeake and Ohio Railway Company be, and it hereby is, authorized to acquire, or acquire an interest in, railroads outside this State forming extensions or additions to said system, as now or hereafter existing, by purchase, consolidation, merger, lease, stock ownership, or otherwise, and to create deeds of trust or mortgages on any property or interest so acquired, or guarantee the mortgage bonds of any railroad so acquired; also to create and issue such additional amounts of stock as the company may deem expedient for the purpose of such acquisition.

2. This Act shall be in force from its passage.

AN ACT

To authorize the Chesapeake and Ohio Railway Company to acquire or guarantee the stock and bonds of any steamship company or companies now or hereafter running to or from any port or ports in Virginia.

Approved December 18, 1889.

1. Be it enacted by the General Assembly of Virginia, That

the Chesapeake and Ohio Railway Company be and is hereby authorized to acquire or guarantee the stock and bonds, or either, of any steamship company or companies now or hereafter running to or from any port or ports in Virginia.

2. This Act shall be in force from its passage.

AN ACT

To authorize the Chesapeake and Ohio Railway Company to aid in the development of business along its line by acquiring or guaranteeing the stock and bonds of mining, manufacturing and other industrial enterprises connected therewith.

Approved December 18, 1889.

1. Be it enacted by the General Assembly of Virginia, That the Chesapeake and Ohio Railway Company be and is hereby authorized to aid in the development of business along its line by acquiring or guaranteeing the stock and bonds of mining, manufacturing and other industrial enterprises connected therewith.

2. This Act shall be in force from its passage.

State of Ohio, }
County of Hamilton, } ss.:

M. E. Ingalls, being duly sworn deposes and says: That on the third day of December, 1896, he was President of The Chesapeake & Ohio Railway Company, having been such President since October 1, 1888; that when he became such President he found in effect upon the said Chesapeake & Ohio Railway a system which he learned had prevailed since about the year 1874, shortly after the road was opened for coal traffic, whereby the coal was handled by a separate and distinct depart-

ment of the railway company, the mine operators delivering for an agreed price at the mines to the coal agent of the railway company all coal mined by them, the net result realized from the seling price of the coal representing the freight earned by the railway company; this system he learned had been inaugurated and carried on by the mutual agreement between the railway company and the mine operators and for their mutual benefit as a means of obtaining the best market and results in the disposition of the coal mined on the line of the railway company; that as such President he continued this system of handling and disposing of all such coal; that on the said third day of December, 1896, he, in the name of and in behalf of The Chesapeake & Ohio Railway Company, made a contract with the New York, New Haven & Hartford Railroad Company, whereby the Chesapeake & Ohio Railway Company agreed to furnish said New York, New Haven & Hartford Railroad Company not to exceed two million gross tons of bituminous coal from mines along its line, in such quantities monthly as wanted, from July 1, 1897, to July 1, 1902, without charge for demurrage, deliveries to be made at not exceeding four hundred thousand tons per annum; that the New York, New Haven & Hartford Railroad Company agreed to pay for said coal at the rate of two dollars and seventy-five cents per gross ton, New Haven basis, settlements to be made monthly; that during the year 1896 it was exceedingly difficult to find a market for the coal mined along the line of the Chesapeake & Ohio Railway; that being convinced that the output of coal from the mines along the line of the Chesapeake & Ohio Railway would be limited, that mine operators would be unable to keep their men employed, and that much of the large equipment belonging to the railroad company would lie idle, he, the said M. E. Ingalls, made the contract above named; that while the price contracted by said New York, New Haven & Hartford Railroad Company to be paid for the coal covered the cost of the coal and all expense incident to its delivery, a further inducement to the contract was that thereby the mines along the line of the Chesapeake & Ohio Railway

might be kept in operation, employment furnished to the miners, and the coal cars and motive power which had been purchased by the Chesapeake & Ohio Railway Company with a view to this business, should be kept employed; that as soon as said contract was made he, the said M. E. Ingalls, made arrangements with Mr. J.L. Beury, the Geenwood Coal and Coke Company, and the Laurel Creek Coal and Coke Company, whereby the said operators undertook to furnish the coal to supply this contract; that this arrangement was subsequently assumed by an association composed of practically all the operators in the New River District, and so long as he, the said M. E. Ingalls, remained President of The Chesapeake & Ohio Railway Company, which was until the first day of February, 1900, the said coal was furnished either through Mr. J. L. Beury, the Greenwood Coal and Coke Company, the Laurel Creek Coal and Coke Company, or the associated miners, who undertook to carry out the arrangement. And this deponent further states that in order to secure a suitable water rate he, the said M. E. Ingalls, as President of The Chesapeake and Ohio Railway Company did, upon the 31st day of December 1897 enter into a contract with the Atlantic Transportation Company, a corporation duly organized and existing under the laws of the State of New Jersey, whereby said Atlantic Transportation Company undertook to carry and transport coal from the port of Newport News to

New York for forty-five cents,	(on board)
New Haven, fifty cents,	"
New London, fifty cents,	"
Providence, fifty cents,	"
Fall River, fifty cents,	"
New Bedford Coal pockets, fifty cents,	"
All other ports (shoal water) sixty cents,	"
Northeast of Cape Cod, sixty cents,	"

bridge allowance to be two cents per ton for each and every bridge.

This deponent as above stated, arranged for the coal at seventy

cents per ton, and for water rate to New Haven at fifty cents per ton, thus providing, as far as it was in his power to do so, an exceedingly beneficial arrangement for The Chesapeake and Ohio Railway Company, of which he was President, and one which, if the contract for the furnishing of the coal at seventy cents per ton, and for the water transportation at fifty cents per ton, had been complied with by the parties with whom said contracts were made, and who were amply able to comply with said engagements at the time said contracts were made, would have yielded a profit to The Chesapeake and Ohio Railway Company over all expenses of not less than one dollar and thirty-five cents per ton. And this deponent further says that in this whole matter he, the said M. E. Ingalls, acted according to his judgment in the best interests of all concerned; that he, the said M. E. Ingalls, regards the contract which The Chesapeake and Ohio Railway Company made through him with the New York, New Haven and Hartford Railroad Company as having saved the Chesapeake and Ohio Railway Company a place in the market, having kept the mines along its lines going and the mine-laborers employed therein at work, and kept the said coal in the market; that the said arrangement was of the greatest benefit not only to The Chesapeake and Ohio Railway Company but to the community served by it known as the New River Coal District.

M. E. Ingalls.

Subscribed and sworn to before me this 12th day of October 1903.

Joseph Moses.
Notary Public.

My Commission expires on the 29th day of January 1904.

CIRCUIT COURT OF THE UNITED STATES,
WESTERN DISTRICT OF VIRGINIA.

Between
The Interstate Commerce Commission,
Petitioner
and
The Chesapeake & Ohio Railway Company and The New York, New Haven & Hartford Railroad Company,
Defendants.

Affidavit of John M. Hall, President of defendant the New York, New Haven & Hartford Railroad Company.

John M. Hall of New Haven, Connecticut, being sworn, on oath deposes and says as follows:

I am a Director of the defendant The New York, New Haven & Hartford Railroad Company. From the year 1893 to 1899 I was Vice-President of defendant and from 1899 to the present time have been its President. I am familiar with all the circumstances in connection with the coal contract with the Chesapeake & Ohio Railway Company, which is the subject matter of the petition in this cause, and as President I made the arrangement with the Chesapeake & Ohio Railway Company, through its President, under which the latter company has been making deliveries of coal to this defendant during the present year.

This defendant is not now and never has been a shipper of coal over the lines of the Chesapeake & Ohio Railway Company. This defendant requires and uses in connection with its business of operating a railroad, a large amount of coal annually which it is necessary to procure by contract and purchase. It has long been the custom of this defendant to enter into contracts covering a period of years, whereby it secured at a uniform rate a supply of coal to be delivered on the line of its own railroad at

different points in New England or New York State. On or about December third, 1896, this defendant entered into a written contract with the Chesapeake & Ohio Railway Company, for the delivery by the latter of two million gross tons of bituminous coal in such monthly quantities as wanted by this defendant from July 1, 1897, to July 1, 1902, a substantial copy of which contract is annexed to the petition in this cause. Neither this defendant nor its officers had any knowledge of the price that the Chesapeake & Ohio Railway Company expected to pay for the coal at the mines, nor of the tariff rates at that time existing from the mines to Newport News, the cost of handling at Newport News, nor the water freights from Newport News to New Haven, Connecticut; Providence, Rhode Island; or Boston, Massachusetts.

The Chesapeake & Ohio Railway Company entered upon the performance of said contract, and for several years annually made deliveries to this defendant of the quantities of coal called for by said contract, rendered its bills for the same at the contract price, and was in due course paid therefor by this defendant.

During the winter of 1900-1901 the Chesapeake & Ohio Railway Company by reason of strikes and other disturbing causes failed to make delivery of the full quantity of coal due under the contract for that year, and by reason of such failure this defendant was compelled to and did supply itself with large quantities of coal from other sources to make up said deficiency, and was compelled to and did pay for the same a greater price than that fixed by said contract, whereby a just and legal claim for damage and reimbursement arose in favor of this defendant against the Chesapeake & Ohio Railway Company to the amount of about $160,000, which claim was settled and compromised by the acceptance of about $120,000, which sum the Chesapeake & Ohio Railway Company paid this defendant in liquidation of said damages.

Early in the year 1902 a general strike of coal miners paralyzed the coal industry, greatly restricted the supply of

coal, enhanced enormously its price, and rendered it impossible for the Chesapeake & Ohio Railway Company to fully deliver the 400,000 tons of coal required to complete said contract for the last year of its term. On the 1st of July, 1902, when the whole of said deliveries should have been made, the Chesapeake & Ohio Railway Company was short in its delivery 59,966 tons. Many times during the year 1902 and prior July 1st in said year, this defendant demanded from the Chesapeake & Ohio Railway Company that it should perform its contract and deliver to this defendant the number of tons of coal due under said contract, but the Chesapeake & Ohio Railway Company pleading its inability to obtain said coal for such delivery, failed to supply and deliver the same within the period of its contract, and as from time to time requested by this defendant; so that it became necessary for this defendant, in order to obtain a supply of coal for the use of its engines and other purposes, to go into the open market and buy other coal in lieu of the 59,966 tons which it had contracted for and which the Chesapeake & Ohio Railway Company ought to have delivered to it for its use. In so doing this defendant was required to pay for the coal so obtained from outside parties a sum largely in excess of the price it would have been required to pay to the Chesapeake & Ohio Railway Company for said coal if delivered under the contract aforesaid, the amount of such excess being $103,910.69, which amount represented the pecuniary loss and damage sustained by this defendant by reason of the failure of the Chesapeake & Ohio Railway Company to deliver to it the full amount of coal due upon the last year of said contract.

This defendant made claim and demand against the Chesapeake & Ohio Railway Company for a reimbursement of said sum of $103,910.69, and insisted and required that the same should be made good to it. The Chesapeake & Ohio Railway Company, through its President, not denying its legal obligation under said contract and admitting its liability to make good the loss sustained as aforesaid by this defendant by reason of the failure of the Chesapeake & Ohio Railway Company to per-

form said contract, nevertheless, on account of the hardship of the case and the fact that its non-performance of said contract was not due to its own fault, but to a condition of affairs over which it had no control, suggested to me as President of this defendant that instead of paying the amount of said bill for excess, it would, although the period for performance had expired, still carry out the said contract and supply to this defendant the deficiency of 59,966 tons of coal, and this defendant recognizing also the hardship of the case and the unusual circumstances that had brought about the failure of the Chesapeake & Ohio Railway Company to perform its contract in full, did consent to accept and receive from it, in lieu of the payment of said sum of damages, the delivery of the 59,966 tons of coal still in arrears under said contract, and thereupon an adjustment and arrangement were orally made between this defendant and said vendor, and the Chesapeake & Ohio Railway Company immediately entered upon the performance thereof, and at the time of the filing of the complaint in this matter before the Interstate Commerce Commission, had delivered to this defendant 34,010 tons, leaving 25,956 tons of the amount of said deficiency still to be delivered.

The arrangement last made was not a new and independent contract, but was in fact a virtual extension of the time of the performance of the original contract.

Except upon information this defendant has no knowledge of the price at which said coal is procured at the mines by the Chesapeake & Ohio Railway Company, nor has it, except upon similar information, any knowledge as to the cost of handling the same or the rates paid by the Chesapeake & Ohio Railroad Company for the transportation of said coal from Newport News to New England; and as a matter of fact this defendant is not concerned in any degree as to whether the Chesapeake & Ohio Railway Company is furnishing said coal at a loss or at a gain.

The Chesapeake & Ohio Railway Company has always held itself out as legally authorized to sell and contract for the sale and delivery of coal, and the fact that it had made such sales

and deliveries of coal, and the fact that it had made such sales and deliveries of coal to various parties, including this defendant, is and has been well known for many years and the existence of the contract between it and this defendant was not in any wise hidden or concealed.

The original contract of 1896, and also the supplemental contract covering the delivery of the 59,966 tons were made in the State of New York, and the place of performance of the original contract was to be in the States of Connecticut, Rhode Island and Massachusetts, and of the supplemental contract in the States of Connecticut and Rhode Island.

On information and belief I will state that during the earlier years of the contract of 1896 the Chesapeake & Ohio Railway Company realized a good profit from the contract in addition to the entire cost of the coal and the cost of handling and all ocean freights and tariff rates of transportation. If during the later years of the contract the deliveries of coal by the Chesapeake & Ohio Railway Company were at a loss, it is because the price which the latter company had to pay for its coal has increased and because the rates of transportation have been increased during the life of the contract.

This defendant does not receive and has not received at any time any rebate or advantage of any kind in the transportation of coal over the lines of the Chesapeake & Ohio Railway Company. It is not shipping and never has shipped any coal over said lines, and is not concerned in any way in the cost of such transportation or in the rates charged for the same. It has not now and never has had during its dealings with the Chesapeake & Ohio Railway Company any purpose or desire to transgress, evade or in any way nullify the provisions of the Interstate Commerce Law as to uniform rates of transportation.

JOHN M. HALL,
President of The New York, New Haven
& Hartford Railroad Company.

On this 18th day of September, 1903, personally appeared before me John M. Hall of New Haven, Connecticut, known to

me to be the President of The New York, New Haven & Hartford Railroad Company, and made oath that the above affidavit and the statements therein contained are true.

JOHN G. PARKER,
Notary Public.

State of Virginia,
City of Richmond, } ss.

E. D. Hotchkiss being first duly sworn, deposes and says:

That he is the General Freight Agent of the Chesapeake & Ohio Railway Company, having been such General Freight Agent since January 1, 1887; that previous to that time and beginning on the first of September 1873, he had been employed in various positions in the office of the then General Freight Agent; that the Chesapeake and Ohio Railway was completed through to the Ohio River about one year previous to his entering the service of said company; that at that time the Kanawha District where there was access to the Kanawha River was the only portion of the line upon which coal development had been made and this on account of having the benefit of river transportation by barge; that as the road was completed and put in operation the coal traffic commenced to move; that from 1872 to about the close of the year 1874 this coal traffic destined for the east was handled in a spasmodic way by dealers in Virginia territory only, each mine operator selling direct to the coal dealer; that in the early part of 1875 at the solicitation of certain mine operators some very crude arrangement was made by the railway company for marketing coal in the east, and that being prior to the extension of the Chesapeake and Ohio Railway to deep-water at Newport News, facilities were established at what was formerly known as James River Wharves, just east of Richmond, at which point small vessels were loaded with coal and the same marketed at Norfolk and other seaboard points, and later on the territory was extended to cover eastern points;

that in 1881 and 1882 the Chesapeake and Ohio Railway Company extended its line to deepwater at Newport News and the crude arrangement previous in effect with reference to the marketing of West Virginia coal at tide-water points was, at the solicitation of the mine operators, perfected and enlarged, and coal wharves were established at Newport News for the shipment of coal to eastern territory, Baltimore, Philadelphia, New York and New England points; that the original arrangement was made between the mine operators and the late General W. C. Wickham, then the Second Vice-President and General Manager of the Chesapeake and Ohio Railroad Company, and later when the arrangement was more thoroughly perfected the First Vice-President of the Chesapeake and Ohio Railway Company, Mr. A. S. Hatch, had charge of the department which handled the coal; that General Wickham died in 1888 and Mr. Ingalls became the President of the Chesapeake and Ohio Railway Company that year. And this deponent further states that this arrangement, which was in effect the handling of the coal through a separate department of the Chesapeake and Ohio Railway Company continued in force until the year 1895 when the West Virginia Legislature passed a law prohibiting transportation lines from being in the business of buying and selling coal; that the arrangement in brief was that the Railway Company agreed to market the coal at the highest obtainable price, paying the vessel freights, insurance and other charges, and the remainder divided upon an agreed basis between the mine operators and the Railway Company, subject to certain minimum prices to be paid for the coal on board cars at the mines, the amount paid to the operator for his coal and the amount retained by the railway company as its freight charges being dependent upon the prices obtained for the coal in the east, such figures, of course fluctuating, more or less, according to market conditions and other circumstances; that as above stated this arrangement continued in effect until the year 1895 when the West Virginia Legislature passed a law prohibiting transportation lines from buying and selling coal, and that following the

passage of this law the business was handled as follows: A corporation known as the Chesapeake and Ohio Coal Agency Company, organized under the laws of the State of New Jersey, and in which the Chesapeake and Ohio Railway Company had no stock or other interest, was organized and made the agency of the New River and Kanawha Coal Operators for the purpose of marketing their coals destined beyond the Capes of Virginia in Eastern Territory, such agency being responsible directly to the operators for the price of the coal as fixed f. o. b. at the mines. This agency was the sole shipper of coal from said mines to Newport News, destined beyond the Capes, and continued to be the sole agency until about the first of April 1900, when certain of the coal operators established two other agencies, known as the C. & O. Coal and Coke Company and W. C. Atwater and Company, which operated in the same territory with the Chesapeake and Ohio Coal Agency Company. These three agencies were the only shippers of coal from said mines to Newport News, destined beyond the Capes, and continued to be the sole agents until about the first day of March 1902, when certain other operators established another agency called the Smokeless Fuel Company which operated in the same territory along with the three agencies above named. These are the four principal agencies. Since that time however, the following additional shippers have been engaged in the handling of coal beyond the Virginia Capes to the same territory, to-wit:

John T. Hesser and Company, about April 1, 1902.

E. A. Willard and Company, about February 1, 1903.

Kanawha Fuel Company, about July 1, 1903.

These agencies arrange for vessels and for their freight and make a delivery price of coal in the eastern market.

And this deponent further states that the method of handling the coal as inagurated by the Chesapeake & Ohio Railway Company was sought and earnestly advocated by the mine operators; that it resulted in a largely increased development in the Kanawha District, and later in the entire development of the New River District, and he further states that he is of opinion that the

development of the coal traffic of the Chesapeake and Ohio Railway Company would not have been anything like so great had not the arrangement been in effect between the operators and the railroad company which resulted in the railroad company finding a market for the coal as stated herein. And this deponent further states that as to the making of the New Haven contract he had no personal knowledge at the time, but that he does know that the movement of coal became at once known to the operators along the line of the Chesapeake and Ohio Railway; that years ago he had conversation with many of them in which they manifested their full knowledge of the details of the contract; that the contract was widely known and upon the failure of certain of the mine operators who had arranged for the delivery of the specific amount of two million tons to carry out their engagement it was arranged by an association composed of practically all of the operators in the New River District to furnish the tonnage called for by this specific contract and for this specific purpose, and the coal was furnished thereunder up to the strike in the New River District which occurred on June 7, 1902.

E. H. Hotchkiss.

Subscribed and sworn to before me this 15th day of October 1903.

Columbus A. Canepa,
Notary Public.

My Commission expires September 17, 1907.

State of West Virginia, }
County of Kanawha, } to-wit:

J. R. Thomas, being duly sworn, deposeth and saith that his residence is in the City of Charleston, county of Kanawha, state of West Virginia; that he is engaged in the business of mining and shipping coal; that he is President of the Carbon Coal Co., and has been such President since April 1st, 1902, and commenced shipping coal from the Carbon Coal Company in Novem-

ber 1902, the latter company operating in Kanawha District of West Virginia; that he is also President of the Kanawha Fuel Company, which latter company is a selling agency company organized under the laws of the State of West Virginia, and handles the entire output from 35 mines, which produce 59% of the entire tonnage from the Kanawha field on the line of the Chesapeake & Ohio Railway Company, known as the Kanawha District, and practically the entire tonnage from the Kanawha District for tidewater destined beyond the Capes since first day of April 1903; that prior to his engaging in business on the line of the Chesapeake & Ohio Railway Company, and since the year 1894, he had been engaged in like business on the line of the Kanawha & Michigan Railway Company in West Virginia on the north side of the Kanawha river, the C. & O. line being on the south side of the river; that while so engaged in business on the line of the K. & M. Ry. Co., he learned of the making of the contract between the Chesapeake & Ohio Railway Company and the New York, New Haven & Hartford Railroad Company, whereby the Chesapeake & Ohio Railway Company was obligated to furnish or cause to be furnished to the New York, New Haven & Hartford Railroad Company about two million tons of coal in annual deliveries of about four hundred thousand tons; that he learned of the making of this contract at or about the time it was made; that the making of the said contract was widely known not only amongst the operators along the line of the Kanawha & Michigan Railway Company, but it was also widely known amongst the operators in both the New River and Kanawha Districts along the line of the Chesapeake & Ohio Railway.

And the affiant further stated that in March or April of the year 1903, he ascertained that there was a balance of about sixty thousand tons of coal undelivered upon this contract, and he ascertained further that there was a probability of Kanawha coal being taken for the balance of said sixty thousand tons instead of New River coal; that he further understood that an opportunity had been given to the coal operators of New River District to finish the contract, but they had declined; that at this

time and prior to about the first of July, 1903, the C. & O. Coal & Coke Company, of which Mr. C. J. Wittenberg was President, had handled all of the Kanawha Fuel Company's coal from said Kanawha District destined for shipments beyond the Capes; that about the middle of April 1903 a verbal arrangement was made between said affiant, C. J. Wittenberg, President of the C. & O. Coal & Coke Co., and Geo. W. Stevens, President of the Chesapeake & Ohio Railway Company, whereby sixty thousand tons of run of mine Kanawha coal should be delivered to the New York, New Haven & Hartford Railroad Company to finish out the amount of the coal undelivered upon said contract; that the price at which said coal was to be delivered by said Kanawha Fuel Company was one dollar and fifteen cents per net ton, or one dollar and twenty-eight cents per gross ton; that said Wittenberg's company which was then acting as the eastern or tidewater agent of said Kanawha Fuel Company was to handle the movement of said coal beyond the Capes, making deliveries to the New York, New Haven & Hartford Railroad Company, and making settlements with the Chesapeake & Ohio Railway Company and the Kanawha Fuel Company respectively; that the furnishing of said sixty thousand tons of Kanawha coal was apportioned equitably amongst all of the mines of which the Kanawha Fuel Company is agent; that prior to concluding the arrangement to furnish the said sixty thousand tons of coal from Kanawha District, said affiant communicated with all of the independent operators producing the character of coal necessary to apply on this contract not represented by the Kanawha Fuel Company advising them of what he proposed to do, and offering them an interest in said sixty thousand tons, based upon their *pro rata* share of the tonnage, in accordance with the capacities of their respective mines, which offer was declined.

Affiant further states that the supplying of said sixty thousand tons as aforesaid constituted no discrimination against any coal or class of coal produced in Kanawha District for shipment beyond the Capes.

Affiant further states that the Kanawha Fuel Company has

never quoted any price on coal to W. C. Bullitt, or been asked to do so; that said W. C. Bullitt is a shipper of coal known as Pocahontas coal originating on the line of the Norfolk & Western Railway Company, and that said W. C. Bullitt is not and has never been a shipper of coal over the line of the Chesapeake & Ohio Railway Company from either the Kanawha District or New River District.

J. R. Thomas.

Subscribed and sworn to before me this 31st day of October, 1903. Given under my hand and seal the day and year aforesaid.

S. P. Richmond,
Notary Public.

State of West Virginia,
County of Kanawha, } to-wit:

William Brown, being duly sworn, deposeth and saith that his residence is in the City of Charleston, county of Kanawha, state of West Virginia; that he is a coal operator in the Kanawha District along the line of the Chesapeake & Ohio Railway Company; that he engaged in coal business in the said Kanawha District in June 1898, when he came over from England to take charge of the Great Kanawha Colliery Company; that when he assumed charge of this operation he ascertained that there was in existence a contract whereby the Chesapeake & Ohio Railway Company had to furnish the New York, New Haven & Hartford Railroad Company coal for a number of years at the rate of about four hundred thousand tons per annum; that said contract at the time was regarded as an exceedingly favorable contract for the Chesapeake & Ohio Railway Company; that at that time the company operated by said affiant was selling coal as low as fifty-five cents per net ton, or sixty-three cents per gross ton; that the existence of the contract was a public matter known to everybody interested in the coal business.

Affiant further states that he is the Secretary of the Kanawha

Fuel Company, has read the affidavit of J. R. Thomas with reference to furnishing sixty thousand tons of Kanawha coal to fill balance of coal undelivered on said contract, and that the statements contained in said affidavit in reference to said sixty thousand tons of coal are true and within the knowledge of said affiant.

WILLIAM BROWN.

Subscribed and sworn to before me this 31st day of October, 1903. Given under my hand and seal the day and year aforesaid.

S. P. RICHMOND,
Notary Public.

State of Ohio,
County of Hamilton, } to-wit:

Forest L. Garrison being duly sworn deposes and says that he resides in the City of Covington, State of Kentucky; that he is engaged in the business of mining and selling coal produced from the Kanawha District on the Chesapeake & Ohio Railway and has been so engaged for the past twenty years; that he is thoroughly familiar with the conditions of the coal trade from that District; that he is the President of the Shonk-Garrison Coal Company, a land company owning upwards of 16,000 acres of land in said District; that he is also President of the Stevens Coal Company an operating company, working the Keystone, Empire, and Acme Mines; that he is also President of the Kanawha Coal & Coke Co., which is the Selling Agency for the three mines above named and also for the Cabin Creek Coal Company, Raccoon Fork Coal Company, Thistle Coal Company, Cherokee Coal Company, Red Warrior Coal Company and Shamrock Coal Company; that he knows it to be a fact that the contract between the Chesapeake & Ohio Railway Company and the New York, New Haven & Hartford Railroad Company for the furnishing of 2,000,000 tons of New River coal in annual

installments of 400,000 tons was an open matter known practically to all the mine-operators in both the New River and Kanawha District; that there was no secret about it; that it became widely known immediately upon being made, and was regarded by the operators as an exceedingly beneficial contract to the mine operators in the New River field filling the contract; that the said contract was for New River Steam Coal and worked no discrimination or injury whatsoever against, or to, the operators in the Kanawha field or coal produced by them, or any of them; that it was a fact very generally known among the coal operators in both the New River and Kanawha District that when the strike occurred in June 1902 the New River District was short in the deliveries under this contract about 60,000 tons; that it was the general understanding among the said coal operators that an obligation rested upon the Chesapeake & Ohio Railway Company to deliver this 60,000 tons of coal; that it was also the general understanding among the said operators that there was an obligation on the operators in the New River *District* to supply the said 60,000 tons and had said strike not occurred affiant has no doubt that said New River operators would have furnished the same; that in March or April 1903 an opportunity was afforded to the companies represented by affiant to furnish the whole or any part of the residue of the undelivered coal but, owing to having all the business that could be taken care of by them, it was declined; that subsequently affiant learned that the Kanawha Fuel Company of which J. R. Thomas was president, had made an arrangement to supply said coal; that said Thomas before closing said arrangement notified this affiant of what he was doing and offered this affiant a pro-rata share of the tonnage based upon the output from the mines represented respectively; that this affiant declined to participate but expressed to the said Thomas his perfect willingness as the representative of his companies that he, the said Thomas, should help the Chesapeake & Ohio Railway Company, out of its obligation to the New Haven Road by supplying the 60,000 tons; and this affiant further says that he is familiar with the cir-

cumstances and conditions under which the arrangement to deliver the 60,000 tons was made, having had conference with the representative of the New River operators and also with the said J. R. Thomas; that this affiant knows that the reason said Thomas made the arrangement aforesaid was not because he wanted the business but because he wanted to help the Chesapeake & Ohio Railway Company fulfil its obligations, and this affiant further states that in furnishing the 60,000 tons to the New York, New Haven & Hartford Railroad Company no discrimination was practised by the Chesapeake & Ohio Railway Company against this affiant, or any shipper or miner of coal in the Kanawha District, or against any coal, or class of coal produced in said District, and that no injury was occasioned thereby to the business of this affiant or to the business of any other mine operator or shipper or shipping agency so far as this affiant knows and believes; affiant further states that he is slightly acquainted with Mr. W. C. Bullitt who is a member of the firm of Castner Curran & Bullitt, who are the Sales Agents for Pocahontas Coal, and who handle the bulk of the coal output along the line of the Norfolk & Western Railway, that so far as this affiant knowns and believes neither said Bullitt nor his firm are now or ever have been shippers of coal over the Chesapeake & Ohio Railway; and this affiant has not at any time either for himself or as acting for the companies he represents offered to sell any coal from the Kanawha District to said W. C. Bullitt, or been applied to for a price on said coal by said Bullitt or any representative of said Bullitt as far as affiant knows and believes.

F. L. Garrison.

Sworn to and subscribed before me this 2nd day of November, 1903, as witness my hand and official seal.

John R. Schindel,
Notary Public.

State of Virginia,
City of Richmond, } to-wit:

Samuel Dixon being first duly sworn, deposes and says: That he resides at Macdonald, in the County of Fayette, State of West Virginia; that he is the President and General Manager of the Macdonald Colliery Company, the Sugar Creek Coal and Coke Company, the White Oak Fuel Company and the Stuart Colliery Company, and engaged in the business of mining coal; that said companies above named are operating companies and are members of the New River Coal Operators Association; that said Association is composed of all the coal operators in said New River District; said Association having been formed for their mutual protection and the advancement of their mutual interests. Affiant further states that prior to September 1, 1893, he the said Samuel Dixon, was engaged in the business of mining coal in what is known as the Kanawha District along the line of the Chesapeake & Ohio Railway Company, but on or before the 1st of September, 1893, he the said Samuel Dixon severed his connection with the Kanawha District and from that time has confined his operations to what is known as the New River District, said operations above named being situated in the said New River District of the Chesapeake & Ohio Railway Company. Affiant further states that the rated capacity of his mines is twenty-six hundred and fifty tons of coal per day, but that it frequently exceeds that amount. Affiant further says that he is thoroughly familiar with the conditions surrounding the coal trade in the New River District, and also in the Kanawha District; that he has known of the contract between the Chesapeake & Ohio Railway Company and the New York, New Haven & Hartford Railroad Company for the supplying of two million tons of coal at the rate of four hundred thousand tons per year ever since that contract was made; that he knows that at the time it was made it was a matter of common knowledge and considered an exceedingly beneficial contract to the operators in the New River District; that he knows that it continued to be an advant-

ageous contract up to about the year 1900, when the price of labor advanced; that he knows that through and by means of said contract the coal operators in the New River District were enabled to get a better price for their coal than they would have gotten had the contract not been made. Affiant further knows that at about the time the said contract was made arrangements were made with Mr. Jos. L. Beury and two companies, of which he was the principal owner, to supply that contract, but that because of Mr. Beury's inability to put out that much coal annually, the said contract was transferred to the coal operators in the New River District as a whole, and the amount of coal put out each year distributed ratably among all the mines. Affiant further says that the making of the said contract constituted no discrimination against the Kanawha District; that he was well acquainted with the mine operators and the conditions under which the coal mining was carried on in the Kanawha District, and that the coal operators of the Kanawha District well understood the whole transaction and did not regard the said contract as in any manner discriminating against them or the coal produced by them. Affiant further says that had it not been for the strike which occurred in June, 1902, the whole of the two million tons of coal would have been furnished by the New River operators, but that total suspension of deliveries, under this contract, was caused on or about the 7th of June, 1902, by the strike which assumed very serious proportions, and which continued until July 14, 1903; that pending this period the operators of the New River District were engaged in fighting the strike vigorously and at great expense and their output was totally suspended for upwards of two months and greatly curtailed the balance of the period; that under these conditions the New River operators were unwilling to fill the said shortage of sixty thousand tons, except at a price which they recognized would be prohibitive, and they, therefore, agreed with Mr. Stevens, the President of the Chesapeake and Ohio Railway, that said balance of sixty thousand tons should be furnished, if he could make the arrangement, from the Kanawha District;

that he the said affiant was present at interviews with reference to the supplying of the balance of sixty thousand tons of coal, and that no discrimination was worked against the New River District or any coal produced in the New River District by reason of the coal being furnished from the Kanawha District. Affiant further says that subsequent to the interview of the representatives of the New River operators and the President of the Chesapeake and Ohio Railway Company, with reference to the New River Association furnishing the said sixty thousand tons of coal, he knows that the matter was taken up between the President of the Chesapeake and Ohio Railway Company, Mr. Geo. W. Stevens, and Mr. J. R. Thomas, the President of the Kanawha Fuel Company, and its Selling Agency, the C. & O. Coal & Coke Co., C. J. Wittenberg, President, and an arrangement made between them whereby Kanawha coal should be taken by the New York, New Haven & Hartford Railroad Company, instead of New River coal for the balance of said sixty thousand tons, and affiant further states that this arrangement was widely known among the operators in the New River District and the Kanawha District; that it was a matter of common knowledge, not only as to the shortage of the sixty thousand tons, but as to how it was going to be supplied, and that said arrangement to so supply the said Kanawha coal worked no discrimination against the operators in the New River field.

SAMUEL DIXON.

Subscribed and sworn to before me this 2nd day of November, 1903. Given under my hand and seal.

A. J. T. TREVVETT.
Notary Public.

My commission expires February 18, 1905.
No stamp required.

State of West Virginia,
County of Kanawha. } to-wit:

I, J. B. Petyon, Jr., a Notary Public in and for the county and state aforesaid, do certify that this day personally appeared before me Justus Collins, to me well known, who being duly sworn, deposeth and saith as follows:

That his residence is in the city of Charleston, county of Kanawha, state of West Virginia; that he is engaged in the business of mining coal at the Collins Colliery Company and the Whipple Colliery Company, in the county of Fayette, in said state of West Virginia, on the Loup Creek branch of the Chesapeake & Ohio Railway, which is a part of the New River District, and that he has been so engaged in such business since the year 1893; that he is the chairman of an association composed of all of the coal operators in said New River District which is known as the New River Coal Operators Association; that he is familiar with the terms of the contract which was made between the Chesapeake & Ohio Railway Company and the New York, New Haven & Hartford Railroad Company, whereby the Chesapeake & Ohio Railway Company agreed to furnish two million tons of coal to the New York, New Haven & Hartford Railroad Company at the rate of four hundred thousand tons per annum, and has been familiar with it since about the time that it was made; that the said contract was widely known amongst all of the coal operators in said New River District; that an arrangement was made between the Chesapeake & Ohio Railway Company and Joseph L. Beury for himself and certain companies in which he was largely interested whereby the two million tons were to be furnished at the price of seventy cents per gross ton at the mines, said price to be increased in the event of an increase in wages; that about 12 to 15 months subsequently said Beury turned over the said contract to the said New River Coal Operators Association to complete, and that said association furnished practically all of the coal to fill the said contract, the amount thereof being divided out amongst the various members of the said association upon an agreed allotment; that the said coal was

furnished by the said association at the price of seventy cents per ton up to about April 1st, 1900, when in consequence of an increase in wages, they demanded a corresponding increase in the price which was fixed at ninety-two and one-half cents per ton and so continued until about April 1st, 1901, when the price was again increased to ninety-five cents per ton, on account of a further increase in wages, which said price of ninety-five cents per ton was conceded by said operators on account of the obligation resting on them to supply the coal necessary to enable the Railway Company to comply with its obligation, notwithstanding the fact that said operators could and did realize about nineteen cents per ton more on the rest of the coal produced by them going to tidewater; that the coal miners strike which began June 7th, 1902, caused a suspension of the deliveries of coal by the said association and left a balance of about sixty thousand tons undelivered on the original contract; that full opportunity was given to the said association of New River operators to fill the remaining portion of said contract; that at an interview about the 1st of March, 1903, between Geo. W. Stevens, President of the Chesapeake & Ohio Railway Company, and said affiant and other operators representing and acting for all of the coal operators in the New River District, the request was made by the said Stevens that the said Association should complete the delivery of the said sixty thousand tons called for by said contract, to which request reply was made that while the said association recognized its obligation to complete the delivery of the said sixty thousand tons of New River coal, yet that on account of strike conditions existing in said District and the enormously increased expenses in producing said coal, the said coal operators were unwilling to furnish the said sixty thousand tons at that time, but if desired, would do so at some future period, and that if the said Stevens could make an arrangement to have the said sixty thousand tons of coal furnished from the Kanawha field, they were perfectly willing for him to do so; and subsequently they understood that an arrangement had been made to fill out said con-

tract with sixty thousand tons of Kanawha coal, and there was no discrimination in so doing; that it was well recognized amongst all of the coal operators, both in New River District and in Kanawha District, that the Chesapeake & Ohio Railway Company was under an obligation to cause the said sixty thousand tons remaining undelivered on the original contract as aforesaid to be delivered; that the whole transaction was well understood in both fields and worked no discrimination against either field; and the affiant further saith that at the time that the said original contract for the delivery of the two million tons of coal to the New York, New Haven & Hartford Company was made, the said contract was regarded by the coal operators as a most favorable and beneficial one for the New River District and it continued to be absolutely so for at least three years of its existence. Affiant further saith that he is now and has been for the past fifteen years engaged in large coal operations on the line of the Norfolk & Western Railway Company, and that at the time the said contract was made, and for a considerable period thereafter the coal sold on the line of the Norfolk & Western Railway Company, of like character, only netted the said operators on the said Norfolk & Western Railway the sum of fifty-nine cents per gross ton, whereas under the terms of the contract for that furnished the New York, New Haven & Hartford Railroad Company, the same netted the operations not less than seventy cents per gross ton throughout its life.

JUSTUS COLLINS.

Subscribed and sworn to before me this 30th day of October, 1903. Given under my hand and seal the day and year aforesaid.

J. B. PEYTON, JR.
Notary Public.

State of West Virginia,
County of Kanawha, } to-wit:

David T. Evans being duly sworn deposeth and saith as follows:

That he is a resident of Powellton, Fayette County, West Virginia; that he is General Manager of the Mount Carbon Company Limited; that he has been engaged in that business for past seventeen years in connection with that Company, and resident of Powellton; that his mines are in what is known as the Kanawha District on the line of the Chesapeake and Ohio Railway Company; that his Company is not connected with the Kanawha Fuel Company, but that it is known as an Independent Operation; that he has known of the contract between the Chesapeake and Ohio Railway Company and the New York, New Haven & Hartford Railroad Company by which the Chesapeake and Ohio Railway Company was to furnish the New York, New Haven & Hartford Railroad Company two millions tons of coal, making annual deliveries of about four hundred thousand tons, ever since about the time contract was made, and that he knows that the said contract has been widely known among the operators along the Chesapeake and Ohio Railway ever since it was made. The affiant further states that in the Spring of 1908 he learned that there was about sixty thousand tons of coal undelivered on said contract and that it was being supplied by the Kanawha Fuel Company. Affiant further states that he had an opportunity to share in the deliveries of this sixty thousand tons of coal and declined same, not desiring to handle it; that the delivery of this coal by the Kanawha Fuel Company worked no discrimination whatever against his Company. The affiant further states that his Company has not at any time quoted any prices on coal to W. C. Bullitt, or been applied to for a quotation.

D. T. Evans.

Subscribed and sworn to before me this 31st day of October,

1903. Given under my hand and seal the day and year aforesaid.

S. P. RICHMOND,
Notary Public.

State of West Virginia,
County of Kanawha. } to-wit:

James Kay being duly sworn deposeth and saith as follows:

That his home is in Charleston, W. Va.; that he is President and General Manager of the Cabin Creek Mining Company, Raccoon Fork Coal & Coke Co., Thistle Coal & Coke Co. and the Shamrock Coal & Coke Co., all of which operations are on the Cabin Creek Branch of the Chesapeake and Ohio Railway in what is known as the Kanawha District of West Virginia; that he has been shipping coal from these operations since November 1902; that prior to taking charge of these operations he was engaged as a coal miner and operator for several years in the New River District on line of the Chesapeake and Ohio Railway; that he has known of the contract between the Chesapeake and Ohio Railway Company and the New York, New Haven & Hartford Railroad Company for the delivery of two million tons of coal in annual deliveries of four hundred thousand tons ever since it was made, and that this contract was well known to every one interested in coal operations both in the New River and Kanawha fields from the beginning; that the Companies of which the affiant is President and General Manager as above stated are not represented by the Kanawha Fuel Company and are what is known as Independent Operations; that the affiant did not desire to participate in the delivery of the sixty thousand tons shortage on the contract above mentioned and was perfectly willing for the Kanawha Fuel Company to deliver said sixty thousand tons; that the delivery of this sixty thousand tons of coal by the Kanawha Fuel Company works no discrimi-

nation whatever against the coal of the Companies represented by the affiant.

This affiant further says that to his knowledge W. C. Bullitt never asked for or received a quotation on coal from the Companies represented by this affiant.

JAMES KAY.

Subscribed and sworn to before me this 31st day of October, 1903. Sworn to under my hand and seal the day and year aforesaid.

S. P. RICHMOND,
Notary Public.

State of West Virginia,
County of Kanawha. } to-wit:

E. P. Mucklow being duly sworn deposeth and saith as follows:

That his home is at Pratt, Kanawha County, W. Va., on the main line of the Chesapeake & Ohio Railway; that he is the Treasurer of the Scranton Splint Coal Company and the Paint Creek Coal Company, both of which operations are located in the Kanawha District of West Virginia along the line of the Chesapeake & Ohio Railway; that he has been connected with these Companies since their organization about two years ago; that prior to his connection with these Companies he resided at Scranton, Pa.; that the above mentioned Companies are not represented by the Kanawha Fuel Company, but are what is known as Independent Operations; that his Companies are miners of splint coal; that splint coal is what is known as domestic coal, and is a higher grade coal than is used for steam purposes; that he would not share in the delivery of the sixty thousand tons of coal, balance of tonnage due on the contract between the Chesapeake & Ohio Railway Company and the New York, New Haven & Hartford Railroad Company for the delivery of

two million tons of coal; that he has no objection whatever to the Kanawha Fuel Company furnishing this balance of sixty thousand tons of coal due as aforesaid, and that by so doing no discrimination whatever is worked against the coal of the Companies with which this affiant is connected.

And this affiant further says that all quotations on coal produced by his Companies are first submitted to him for approval, and that to his knowledge W. C. Bullitt never asked for or received a quotation on coal from the Companies with which this affiant is connected.

E. P. Mucklow.

Subscribed and sworn to before me this 31st day of October, 1903. Given under my hand and seal the day and year aforesaid.

S. P. Richmond,
Notary Public.

State of West Virginia,
County of Kanawha. } to-wit:

R. B. Cassady being duly sworn deposeth and saith as follows: That he resides in the city of Charleston, W. Va.; that he is Superintendent of the Winifrede Coal Company situated on the line of the Chesapeake & Ohio Railway in the Kanawha District of West Virginia, and has been connected with this mining operation as Assistant Superintendent and Superintendent for twenty years; that he has known of the contract between the Chesapeake & Ohio Railway Company and the New York, New Haven & Hartford Railroad Company to deliver two million tons of coal in annual deliveries of four hundred thousand tons ever since the said contract was made; that this contract was a matter of common knowledge among everyone interested in coal mining in both the New River and Kanawha Fields; that the Winifrede Coal Company is not represented by the Kanawha

Fuel Company, but is what is known as an Independent Operation; that this affiant did not desire to share in the delivery of this sixty thousand tons of coal due on the old contract above mentioned, which was being supplied by the Kanawha Fuel Company; that this affiant had no objections to this sixty thousand tons being furnished by the Kanawha Fuel Company, and that the furnishing of this sixty thousand tons by the said Kanawha Fuel Company works no discrimination whatever against the mines represented by this affiant.

This affiant further states that he has never quoted coal to W. C. Bullitt or been asked for a quotation on coal.

R. B. Cassady.

Subscribed and sworn to before me this 31st day of October, 1903. Given under my hand and seal the day and year aforesaid.

S. P. Richmond,
Notary Public.

State of West Virginia,
County of Kanawha. } to-wit:

D. A. Nease being duly sworn deposeth and saith as follows:

That he is President of the Kanawha & Coal River Coal Company which operates and controls a number of mines and the Kanawha & Coal River Railway, which mines and railway are situated in the Kanawha District of West Virginia on the line of the Chesapeake & Ohio Railway; that he has been connected with the Kanawha & Coal River Coal Company since its organization, and has been engaged in shipping coal since September 1901; that the above mentioned Company is not represented by the Kanawha Fuel Company, but is what is known as an Independent Operation; that his Company are miners of high grade splint or block coal called "Black Band;" that this coal is what is known as domestic coal and is a higher grade coal than is

used for steam purposes; that in the Spring of 1903 he learned there was about sixty thousand tons of coal undelivered on a contract between the Chesapeake & Ohio Railway Company and the New York, New Haven & Hartford Railroad Company for the delivery of a large tonnage of coal; that he had an opportunity to share in the delivery of this sixty thousand tons of coal and declined the same, not desiring to handle it; that he was perfectly willing for the Kanawha Fuel Company to deliver this sixty thousand tons of coal, and that by doing so no discrimination whatever was worked against the coal of the mines represented by the affiant.

The affiant further states that his Company has not at any time quoted any price on coal to W. C. Bullitt or been applied to by him for a quotation.

D. A. NEASE.

Subscribed and sworn to before me this 31st day of October, 1903. Given under my hand and seal the day and year aforesaid.

S. P. RICHMOND.
Notary Public.

State of New York, County of New York. } to-wit:

J. R. Clarke being duly sworn deposeth and saith, as follows: That his residence is in the City of Brooklyn, State of New York; that from January 1st, 1903, to September 1st, 1903, he was the mines agent for the sale of coal from the mines located on the Paint Creek Branch of the Chesapeake and Ohio Railway Company, in what is known as the Kanawha District in West Virginia; that his sales of coal for the mines aforesaid were made through the W. K. Niver Coal Company, Baltimore, Md.; that he has no independent recollection of the arrangement made with the Kanawha Fuel Company, at the time such arrangement was made, to supply the deficiency of 60,000 tons of coal due

on the contract between the Chesapeake and Ohio Railroad Company and the New York, New Haven and Hartford Railroad Company; that the matter may have been brought to his attention but that there was no occasion for his charging his memory with it; that he would not have cared to participate in the delivery of this 60,000 tons of coal due as aforesaid; that he had no objections whatever to the Kanawha Fuel Company furnishing this balance of 60,000 tons of coal,—and that by so doing no discrimination whatever was worked against the mines represented as aforesaid by this affiant.

And this affiant further says that the arrangement between himself, as the mines agent, for the sale of their coal as aforesaid and the W. K. Niver Company was that all quotations on coal purchased of the mines represented by this affiant should be made by this affiant to the W. K. Niver Company; and that the arrangement further was that all inquiries of the mines for quotations on coal should be referred to this affiant,—and that to his knowledge W. C. Bullitt never asked for or received a quotation on coal from the Companies with which this affiant was connected as aforesaid.

J. R. Clarke.

Subscribed and sworn to before me this 4th day of November, 1903. Given under my hand and seal the day and year aforesaid.

Elbridge F. Hills,
Notary Public,
New York Co.
No. 212.

District of Columbia,
City of Washington. } to-wit:

I, Martin S. Decker, a Notary Public in and for the City aforesaid and the District of Columbia, do certify that this day personally appeared before me William C. Bullitt, to me well known, who, being duly sworn, deposeth and saith as follows:

That in the month of June, 1903, he applied to J. W. Hopkins, of Richmond, Virginia, for a price on Kanawha coal, that said Hopkins is and for many years has been a large handler of coal from the line of the Chesapeake & Ohio Railway Company; that in reply to his inquiry said Hopkins offered to sell to him for shipment to Newport News and beyond the capes such quantity of Kanawha coal as said affiant might wish to buy, not to exceed, however, one thousand (1,000) tons per day; that the price named by said Hopkins was satisfactory to said affiant had he been able to secure the reduction in freight rate which he thereupon applied for to the Chesapeake & Ohio Railway Company.

WILLIAM C. BULLITT.

Subscribed and sworn to before me this thirteenth day of November, 1903.

Given under my hand and notorial seal the day and year aforesaid.

MARTIN S. DECKER,
Notary Public.

State of Virginia,
City of Roanoke, } to-wit:

This day personally appeared before the undersigned, A. B. Coleman, a Notary Public for the city and state aforesaid, D. H. Matson, who being duly sworn says:

That he is a Coal and Coke Broker in the City of Roanoke; that he has been in the coal business for nineteen years; that he was, for many years, President of the Pocahontas Coal Company through which company was handled almost the entire output of the Pocahontas Coal Fields; that after his association with that company as its President, he was the Manager at the City of Roanoke for the firm of Castner, Curran & Bullitt, who were Sales Agents for nearly the entire output of the Pocahontas Field; that since he left the firm of Castner, Curran & Bullitt, he has been in business for himself in the City of Roanoke as a Coal & Coke Broker and is engaged in selling coal; that he is also selling

the coal of the American Coal Company, No. 1 Broadway, New York, which company owns mines in the Pocahontas District.

Affiant further says that he is familiar with the course of business between the vendor and vendee of coal, and the course of business in making contracts for the sale of coal within his experience has been that the following clause, to-wit:

"Any portion of this tonnage not shipped by ——— on which date this contract will expire, shall be cancelled," or a clause permitting the seller to cancel all coal not delivered within the period provided for the by the contract upon certain conditions, has been and is the usual course of business among dealers in coal.

D. H. MATSON.

Subscribed and sworn to before me this 18th day of November, 1903.

A. B. COLEMAN,
Notary Public.

My commission expires January 23, 1906.

District of Columbia,
City of Washington, } to-wit

J. M. Smith, being duly sworn deposeth and saith, that his residence is the City of Washington, District of Columbia; that he is Auditor to the Interstate Commerce Commission; that in his office files are the tariff sheets of the railway companies which they are required to file with said Commission under the Act to regulate commerce, and Acts amendatory and supplementary thereto; and that he has immediate supervision of and knowledge of tariffs so filed by the railway companies under the Act aforesaid.

Affiant says that his attention has been called to a tariff sheet filed by the Chesapeake & Ohio Railway Company in the case of Interstate Commerce Commission against the Chesapeake & Ohio Railway Company and the New York, New Haven & Hartford Railroad Company, pending in the Circuit Court for the Western District of Virginia, which tariff sheet bears date "Richmond,

Virginia, April 10, 1895" and is "Through Freight Tariff No. 5177, rates of transportation taking effect April 15, 1895, via rail to Newport News, Virginia, thence via ocean and vessels, on bituminous coal," "from New River District" and "from Kanawha District" to "New York, N. Y.," which said tariff sheet is signed by E. D. Hotchkiss, General Freight Agent, and by W. P. Walker, Jr., General Freight Traffic Manager.

Affiant says that this tariff sheet has not been filed by the Chesapeake & Ohio Railway Company, or any one else, with the Interstate Commerce Commission.

Affiant further says that the tariff sheet above described and tariff sheets marked "I. C. C. No. 829" and "I. C. C. No. 845" which are filed by the Chesapeake & Ohio Railway Company in the above-styled cause, are not applicable upon coal shipped from the New River or Kanawha Districts, of West Virginia, to New Haven or points in New England, but that said rate sheets are only applicable, as appears on the face thereof, "to New York, N. Y."

And affiant further says that the first rate sheet applicable on bituminous coal from the New River District and Kanawha District, in West Virginia, to points in New England, which is filed in the record in the above cause, is freight tariff "I. C. C. No. 911" of the Chesapeake & Ohio Railway Company.

Affiant further says that according to the tariff sheets of the Chesapeake and Ohio Railway Company, which were filed with the Interstate Commerce Commission as required by law, the only rail rate applicable on coal shipped from New River District and Kanawha District, in West Virginia, to New Haven and other New England points from October 1, 1895, to January 2, 1899, was $2.00 per ton of 2,240 pounds to Newport News, Virginia, the same to be added to the ocean rate from Newport News to New Haven or other New England points.

Affiant says that there was no through rate filed by the Chesapeake & Ohio Railway Company on coal from New River or Kanawha Districts to New Haven or other New England points during the period aforesaid, and therefore the transportation charge

from the New River and Kanawha Districts to New England points was the local rate of $2.00 per ton to Newport News, added to prevailing ocean rates to New Haven and other New England points.

Affiant further says that effective October 1, 1895, the Chesapeake and Ohio Railway Company filed with the Interstate Commerce Commission its freight tariff on coal and coke from New River District and from Kanawha District to Newport News, which said freight tariff sheet is "I. C. C. No. 227" and "C. & O. Railway freight tariff No. 5375," and the rate in said tariff sheet as above described, affiant says applied to the transportation by the Chesapeake & Ohio Railway Company to Newport News of coal shipped from the New River and Kanawha Districts to New Haven and other New England points.

Affiant says that this original tariff sheet, "I. C. C. No. 227," is now in his possession and a copy thereof is herewith filed, and he is ready to produce the original for examination if required to do so.

Affiant says that effective January 2, 1899, the Chesapeake & Ohio Railway Company filed with the Interstate Commerce Commission a freight tariff on coal eastbound from the New River and Kanawha Districts to Newport News, which said freight tariff is "C. & O. Railway freight tariff No. 7964," and is "I. C. C. No. 826" superseding "No. 227," by which said tariff sheet the rate on coal from the New River District to Newport News was $1.55, and from the Kanawha District to Newport News was $1.70, per ton of 2,240 pounds, and which said rate and tariff sheets continued in effect over the Chesapeake & Ohio Railway on coal shipped from the New River and Kanawha Districts to New Haven and other New England points until March 8, 1899.

Affiant further says that from January 2, 1899, to March 8, 1899, the Chesapeake & Ohio Railway Company had not filed with the Commission a tariff sheet making any rate from New River and Kanawha Districts, in West Virginia, to New Haven or other New England points, and that the rates filed with the Commission and applicable over said railway on coal from said New River and

Kanawha Districts to New Haven and other New England points were the said rates of $1.55 and $1.70 to Newport News, the same to be added to the ocean rates to New Haven and other New England points, a correct copy of which said "C. & O. Railway freight tariff No. 7964" and "I. C. C. No. 826" is herewith filed; the original thereof being in the possession of affiant, which he is ready to produce for inspection when required to do so.

Affiant further says that the Chesapeake & Ohio Railway Company filed with the Interstate Commerce Commission, effective March 8, 1899, freight tariff No. 8155, "I. C. C. No. 911," on bituminous coal, carloads from the New River District and Kanawha District to Newport News "when destined beyond the capes," which said rate from the New River District was 90 cents per ton of 2,240 pounds, and from the Kanawha District was $1.15 per ton of 2,240 pounds.

And affiant further says that from March 8, 1899, down to and including the date (to-wit: July 13, 1903), at which the petition was filed in the Circuit Court of the United States for the Western District of Virginia in the case above referred to, that the tariff sheets filed in said cause by the Chesapeake & Ohio Railway Co., which affiant has examined, show correctly the rates over said railway on bituminous coal from the New River and Kanawha Districts, in West Virginia, to Newport News, Virginia, "when destined beyond the capes" and apply on shipments made from said New River and Kanawha Districts to New Haven and other New England points.

Affiant further says that the Chesapeake & Ohio Railway Company has never filed with the Interstate Commerce Commission a freight tariff on coal from the New River and Kanawha Districts, in West Virginia, through to New Haven or other New England points, but that the rate of the Chesapeake & Ohio Railway Company applicable to coal from the New River and Kanawha Districts to New Haven and other New England points up to March 8, 1899, was the rate on file with the Commission by the Chesapeake & Ohio Railway Company from the New

River and Kanawha Districts, in West Virginia, to Newport News, Virginia.

Affiant has made up from the tariff sheets on file with the Interstate Commerce Commission the rates of the Chesapeake & Ohio Railway Company applicable to coal shipped from the New River and Kanawha Districts, in West Virginia, to New Haven and other New England points, from October 1, 1895, to the time of filing of the petition in the above-styled cause, which said statement affiant herewith files as part of his affidavit.

J. M. SMITH.

Subscribed and swown to before me this 14th day of November, 1903.

Given under my hand and official seal the day and year aforesaid.

MARTIN S. DECKER,
Notary Public.

Exhibit to my affidavit.
J. M. Smith.
M. S. D.

Interstate Commerce Commission.
Auditor's Office, November 14, 1903.

Statement showing rates on Bituminous Coal, C. L. from New River and Kanawha Districts to Newport News, Va., when destined beyond the Capes; also the rates when destined to New York, N. Y., from October 1, 1895, to date.

From	RATES PER TON OF 2,240 POUNDS.				
	New River District.			Kanawha District.	
To Newport News, Va.	When destined beyond the Capes.	When destined to New York, only.		When destined beyond the Capes.	When destined to New York, only.
Date of Changes.	Bituminous Coal.	Steam Coal.	Run of Mine, Nut and Slack Coal.	Bituminous Coal.	Bituminous Coal.
October 1, 1895 to January 2, 1899	$2.00*	.....	.....	$2.50*	.....
January 2, 1899	[1]1.55*	.....	.....	[1]1.70*	.....
March 8, 1899.....	.90	.....	.....	1.15	.....
May 13, 1899.....	.80	.....	.....	1.05	.....
January 17, 1900 ...	.85	.....	.....	1.10	.....
February 1, 1900 ...	1.00	.....	.....	1.25	.....
April 2, 1900... ..	1.15	.....	.....	1.30	.....
May 1, 1900.....	1.15	$1.00	.....	1.30	.....
May 15, 1900.....	1.15	1.00	.....	1.25	.....
May 28, 1900.....	1.15	1.00	.....	1.25	.....
October 26, 1900....	1.15	1.00	$1.00	1.25	.....
April 1, 1901.....	1.25	1.00	1.00	1.35	.....
April 3, 1901.....	1.25	1.05	1.05	1.35	.....
April 21, 1902.....	1.25	1.25	1.25	1.35	$1.35
October 2, 1902....	1.25	1.25	1.25	1.35	1.35
January 12, 1903 ...	[A]1.25	[A]1.25	[A]125	[A]1.35	1.35
April 1, 1903 to date, Nov 14, 1903.	[A]1.35	[A]1.35	[A]1.35	[A]1.45	[A]1.45

Rates marked thus * prior to March 8, 1899, local rates. Applicable to Newport News, locally and when destined beyond the Capes.

[1] On Coal for Bunker delivery there will be an additional charge of 75c. per ton of 2,240 pounds for terminal service.

[A] Freight charges to be assessed on basis of actual weights as ascertained by track scales at regular coal weighing points, subject to a minimum of 15 tons per car.

Note.—Prior to March 8, 1899, there were no special rates, on file, applying on coal from New River and Kanawha Districts to Newport News, Va., when destined to points beyond the Capes. Local rates to Newport News, as shown above applied on such traffic prior to date named.

M.S.D.
N.R. TO BE POSTED IN TWO CONSPICUOUS PLACES AT EACH FREIGHT SHIPPING STATION.

AUTHORITY No. 144.
NO CHANGE: Reissue.

C. & O. R'Y FREIGHT TARIFF No. 5375.
SUPERSEDING No. 4906.

FREIGHT TARIFF

— OF THE — 5426

CHESAPEAKE AND OHIO RAILWAY COMPANY

— ON —

COAL AND COKE,

Cancelled by 826 & 827

CAR LOADS, MINIMUM WEIGHT 12 TONS.

Effective

FROM NEW RIVER DISTRICT:

Quinnimont	W. Va.	Cunard	W. Va.	Fire Creek	W. Va.	Cavendish	W. Va.
Prince	"	Brown	"	East Sewell	"	Lookout	"
Alaska	"	Harvey	"	Sewell	"	Nuttall	"
Claremont	"	Red Star	"	Caperton	"	Fayette	"
Beechwood	"	Glen Jean	"	Keeney's Creek	"	Elmo	"
Stone Cliff	"	Dun Loup	"	Boone	"	Sunnyside	"
Thurmond	"	Turkey Knob	"	Ballanger	"	Gaymont	"
Rush Run	"	Macdonald	"	Masters	"	Hawk's Nest	"
Red Ash	"	Beury	"	Dubree	"	Ansted	"
Brooklyn	"	Central	"				

FROM KANAWHA DISTRICT:

Gauley	W. Va.	Montgomery	W. Va.	Black Cat	W. Va.
Deep Water	"	Union Coal Company	"	East Bank	"
Mt. Carbon	"	Con. Mining Co.	"	Coalburg	"
Powellton Junction	"	Handley	"	Ronda	"
Diamond	"	Dego	"	Acme	"
Forrest Hill	"	Paint Creek	"	Cabin Creek	"
St. Clair	"	Gordon's	"	Peerless	"
Eagle	"	Crown Hill	"	Winifrede Junction	"
Edgewater	"	Belmont Coal Co.	"	Spring Hill	"
Crescent	"				

— TO —

LOCAL STATIONS EASTBOUND.

From Gauley Branch Stations—Burdette, Nicholas Road, Belva, Vaughan, Morris, and Greendale, W. Va.—Ten cents per ton higher than Rates from New River District.

ISSUED RICHMOND, VA., SEPTEMBER 24, 1895.

EFFECTIVE OCTOBER 1, 1895.

W. P. WALKER, Jr.,
Freight Traffic Manager.

E. D. HOTCHKISS,
General Freight Agent.

TO		FROM NEW RIVER DISTRICT.			FROM KANAWHA DISTRICT.			
		Coke, PER TON 2,000 lbs.	Steam Coal, PER TON 2,240 lbs.	Fuel Coal, PER TON 2,240 lbs.	Coke, PER TON 2,000 lbs.	Splint Coal, PER TON 2,240 lbs.	Gas Coal, PER TON 2,240 lbs.	Cannel Coal, PER TON 2,000 lbs.
Norfolk	Va.					3.00	3.00	
Portsmouth	"							
Phœbus	"							
Hampton	"							
Newport News	"							
*Old Point Junction	"							
Morrison	"							
*Mellen	"							
Oriana	"							
*Reservoir	"							
Lee Hall	"							
Grove Wharf	"							
Williamsburg	"							
*Jones	"							
*Newman's	"							
Ewell	"							
Kelton	"							
*Vaiden	"							
Toano	"	3.25	2.00	2.00	3.75	2.50	2.50	2.25
Diascund	"							
Lanexa	"							
*Walker's	"							
*Windsor Shades	"							
Providence Forge	"							
Mountcastle	"							
*Nance	"							
Roxbury	"							
*Turner's	"							
Elko	"							
*Clarke's	"							
*Fort Lee	"							
*Gibson	"							
*Fulton Brick Yard	"							
Burton	"							
*Orleans street	"							
Richmond	"							
*Brookland	"							
*Hunslett	"							
Ellerson	"							
Atlee	"							
*Pottomoi	"							
Asbeake	"							
Peake	"							
*Cady	"							
Hanover	"							
*Blanton	"							
*Wickham	"							
*South Anna	"	2.75	2.00	2.00	3.25	2.50	2.50	2.25
*Little River	"							
*Garnett	"							
Doswell	"							
Verdon	"							
*Noel	"							
Hewlett	"							
*Holliday	"							
*Manico	"							
Beaver Dam	"							
Dawson	"							
Bumpass	"							
Buckner	"							
Frederick Hall	"							
Pendleton	"							
Minera[l City	"							
Louisa	"							
*Crank	"	1.88	1.88	1.88	2.15	2.50	2.50	2.25
*Clay Valley	"							
Trevilian	"							
Green Springs	"							
Washington	D. C.		2.25	2.25		3.00		2.75
Melton	Va.							
Gordonsville	"							
Madison	"	1.88	1.88	1.88	2.15	2.50	2.50	2.25
Orange	"							

? No Agent. Freight must be prepaid. * When for export, $2.15.

TO	FROM NEW RIVER DISTRICT.			FROM KANAWHA DISTRICT.			
	Coke, PER TON 2,000 lbs.	Steam Coal, PER TON 2,240 lbs.	Fuel Coal, PER TON 2,240 lbs.	Coke, PER TON 2,000 lbs.	Splint Coal, PER TON 2,240 lbs.	Gas Coal, PER TON 2,240 lbs.	Cannel Coal, PER TON 2,240 lbs.
Lindsay . . . . . Va.							
Cobham . . . . . "							
Campbell . . . . . "							
*Trice's . . . . . "	1.88	1.88	1.88	2.15	2.60	2.50	2.25
Keswick . . . . . "							
Shadwell . . . . . "							
*Massie . . . . . "							
*Moore's Creek . . . . . "							
Charlottesville . . . . . "							
Union Station . . . . . "							
*Wood's . . . . . "							
Ivy . . . . . "							
Meehum's River . . . . . "	1.88	1.70	1.70	2.15	2.25	2.25	2.25
Crozet . . . . . "							
Greenwood . . . . . "							
Afton . . . . . "							
*Blue Ridge . . . . . "							
Basic City . . . . . "							
Waynesboro' . . . . . "							
*Templeton . . . . . "	1.88	1.60	1.60	2.15	2.10	2.10	2.25
Fishersville . . . . . "							
*Brand . . . . . "							
Staunton . . . . . "							
*La Grange . . . . . "	1.88	1.50	1.50	2.15	2.00	2.00	2.10
*Snyder's . . . . . "							
Swoope . . . . . "							
*Christian . . . . . "							
Buffalo Gap . . . . . "							
*North Mountain . . . . . "							
*Chapin . . . . . "							
Ferrol . . . . . "	1.50	1.40	1.40	1.80	1.90	1.80	1.90
Augusta Springs . . . . . "							
*Saffers . . . . . "							
Craigsville . . . . . "							
Bell's Valley . . . . . "							
*Una . . . . . "							
Goshen . . . . . "							
*Panther . . . . . "							
Millboro' . . . . . "							
*Mason's Tunnel . . . . . "							
*Crane . . . . . "							
*Copeland . . . . . "							
*Griffith . . . . . "	‡75	1.00	1.00	1.15	1.20	1.50	1.75
Longdale . . . . . "							
Clifton Forge . . . . . "							
West Clifton Forge . . . . . "							
Low Moor . . . . . "							
*Rich Patch Junction . . . . . "							
*Iron Mountain . . . . . "							
Covington . . . . . "	‡75	1.00	1.00	1.15	1.20	1.20	1.50
*McDowell . . . . . "							
Dunlap . . . . . "							
Backbone . . . . . "							
*Hematite . . . . . "	75	1.00	1.00	1.15	1.20	1.20	1.50
*Jerry's Run . . . . . "							
Alleghany . . . . . "							
Tuckahoe . . . . . W. Va.							
White Sulphur . . . . . "							
*Greenbrier . . . . . "							
*Hart's Run . . . . . "							
Caldwell . . . . . "							
Ronceverte . . . . . "							
*Rockland . . . . . "							
Fort Spring . . . . . "	75	90	90	1.15	1.20	1.10	1.20
*Snow Flake . . . . . "							
*Blue Stone . . . . . "							
*Half-way . . . . . "							
Alderson . . . . . "							
*Mohler . . . . . "							
*Wolf Creek . . . . . "							
Stock Yards . . . . . "	75	75	75	1.15	1.00	90	1.00
Lowell . . . . . "							
Talcott . . . . . "	75	75	75	1.00	1.00	90	1.00
*Pilldale . . . . . "							

* No Agent. Freights must be prepaid. ‡ Also applies on Cannel Nut and Cannel Slack Coal.
† When for pig iron furnaces, 50 cents per ton.

TO	FROM NEW RIVER DISTRICT.			FROM KANAWHA DISTRICT.			
	Coke, PER TON 2,000 lbs.	Steam Coal, PER TON 2,240 lbs.	Fuel Coal, PER TON 2,240 lbs.	Coke, PER TON 2,000 lbs.	Splint Coal, PER TON 2,240 lbs.	Gas Coal, PER TON 2,240 lbs.	Cannel Coal, PER TON 2,240 lbs.
Don, W. Va.							
Hinton, "							
*Tug Creek, "	75	75	75	1.00	1.00	90	1.00
Brooks, "							
Sandstone, "							
Meadow Creek, "							
JAMES RIVER DIVISION.							
Richmond, Va.							
*Haxall, "							
*Water-Works, "							
*Korah, "							
*Westham, "							
Lorraine, "							
*Tuckahoe, "							
Vinita, "							
*Manakin, "							
*Harris, "							
*Boscobel, "	2.75	2.00	2.00	3.25	2.50	2.50	2.25
Stanard, "							
Lee, "							
*State Farm, "							
*Thorncliff, "							
Maiden's, "							
Irwin, "							
*Bolling Hall, "							
Rock Castle, "							
West View, "							
Stokes, "							
Pemberton, "							
*Sand Pit, "							
*Howard's Neck, "							
Elk Hill, "							
Island, "							
Columbia, "							
*Rivanna, "							
Boswell, "							
Bremo, "	2.75	2.00	2.00	3.25	2.50	2.50	2.25
Middleton, "							
Hardware, "							
Payne's, "							
*Nicholas, "							
Scottville, "							
Brown's, "							
Warren, "							
*McCulloch, "							
Howardsville, "							
Highland, "	2.75	2.00	2.00	3.15	2.50	2.50	2.25
Manteo, "							
*Warminster, "							
Midway, "							
Wingina, "							
Norwood, "							
Buffalo Springs, "							
*Greenway, "	2.65	2.00	2.00	3.05	2.50	2.50	2.25
Bolton, "							
Gladstone, "							
*Allen's Creek, "							
*Riverville, "							
Walker's Ford, "							
Stapleton, "							
Galtville, "							
*Mt. Athos, "							
*Six-Mile Bridge, "	2.55	2.00	2.00	2.95	2.50	2.50	2.25
*Kelley's, "							
*Tyree, "							
*Brick Yard, "							
Lynchburg, "	1.25	2.00	2.00	2.85	2.45	2.50	2.25
*Smith's Lock, "							
*Rousens, "							
Bethel, "	1.12	2.00	2.00	2.75	2.40	2.50	2.25
*Holcomb Rock, "							
Pedlar, "							

* No Agent. Freight must be prepa

TO	FROM NEW RIVER DISTRICT.			FROM KANAWHA DISTRICT.			
	Coke, PER TON 2,000 lbs.	Steam Coal, PER TON 2,240 lbs.	Fuel Coal, PER TON 2,240 lbs.	Coke, PER TON 2,000 lbs.	Splint Coal, PER TON 2,240 lbs.	Gas Coal, PER TON 2,240 lbs.	Cannel Coal, PER TON 2,240 lbs.
JAMES RIVER DIVISION.—Con.							
Coleman's . . . . . Va. *Waugh's. . . . . " Big Island. . . . . " *Major . . . . . "	1.12	2.00	2.00	2.65	2.20	2.50	2.25
*Snowdon . . . . . " Balcony Falls . . . . . " Glasgow. . . . . "	1.12	2.00	2.00	2.55	2.20	2.50	2.25
*Locher's Quarry. . . . . " West End . . . . . " Gilmore . . . . . " *Alpine . . . . . " Indian Rock. . . . . " *Dillon . . . . . "	1.12	1.90	1.90	2.45	2.10	2.40	2.25
Buchanan . . . . . " Penn . . . . . " Springwood . . . . . " *Little Tunnel . . . . . " *Catawba . . . . . "	1.12	1.90	1.90	2.35	2.10	2.40	2.25
*Saltpetre . . . . . " *Burks . . . . . " *Salisbury . . . . . "	1.12	1.80	1.80	2.30	2.00	2.30	2.25
Eagle Mountain . . . . . " Bessemer . . . . . "	1.12	1.80	1.80	2.15	2.00	2.30	2.25
Cala Water . . . . . " *Pig Hill . . . . . " *Price's Bluff. . . . . " *Haden . . . . . "	1.12	1.40	1.80	2.15	2.00	2.30	2.25
*Baldwin. . . . . "	1.12	1.40	1 80	2.00	2.00	2.30	2.25
Glen Wilton. . . . . " Lick Run . . . . . " Iron Gate . . . . . " *So. Clifton Forge . . . . . "	‡75	1.25	1.25	2.00	1.45	1.45	2.25
LEXINGTON BRANCH.							
Miller's . . . . . Va. *West Miller's . . . . . " *N. & W. Junction . . . . . " *Loch Laird . . . . . " Buena Vista. . . . . "	‡1.50	2.00	2.25	1.75	2.50	2.25	2.50
*Appold's. . . . . " *Paper Mill. . . . . " *Stratton's . . . . . " *South River . . . . . " E. Lexington . . . . . " Lexington. . . . . "	1.50	2.00	1 75	1.75	2.00	2.50	2.50
BUCKINGHAM R. R. BRANCH.							
*New Canton . . . . . Va. *Dutch Gap . . . . . " Arvonia . . . . . "	3.15	2.40	2.40	3.65	2.90	2.90	2.65
*Penlan . . . . . " *Williams . . . . . " Johnson's . . . . . " *Alpha . . . . . " *Newton . . . . . " White Hall . . . . . " *Dillwyn . . . . . " *Smith's . . . . . " *Hubbard . . . . . " *Rosney . . . . . "	3.35	2.60	2.60	3.85	3.10	3.10	2.85
WARM SPRINGS VALLEY BRANCH.							
*Damron . . . . . Va. *Falling Springs . . . . . " *Natural . . . . . " *Cedar Creek . . . . . " *Kincaid . . . . . "	1.75	2.00	2.00	2.15	2.20	2.20	2.50

TO	FROM NEW RIVER DISTRICT.			FROM KANAWHA DISTRICT.			
	Coke, PER TON 2,000 lbs.	Steam Coal, PER TON 2,240 lbs.	Fuel Coal, PER TON 2,240 lbs.	Coke, PER TON 2,000 lbs.	Splint Coal, PER TON 2,240 lbs.	Gas Coal, PER TON 2,240 lbs.	Cannel Coal, PER TON 2,240 lbs.
WARM SPRINGS VALLEY BRANCH. Continued.							
*Callison . . . . . Va. *Groce . . . . . " Hot Springs . . . . . "	1.75	2.00	2.00	2.15	2.20	2.20	2.50
CRAIG VALLEY BRANCH.							
*Whitten's . . . . . Va. *Horton . . . . . " *Roaring Run . . . . . " *Lemons . . . . . " *Surber . . . . . " *Oriskany . . . . . " *Dickinson . . . . . " *Given . . . . . " *Barbour's Creek . . . . . " *Ripley Springs . . . . . " Craig City . . . . . "	1.25	2.00	2.00	2.35	2.20	2.55	2.45

*No Agent. Freight must be prepaid.

TO BE POSTED IN TWO CONSPICUOUS PLACES AT EACH FREIGHT-SHIPPING STATION

AUTHORITY No. 3283.
CHANGE:
REDUCTION.

C. & O. R'Y FREIGHT TARIFF No. 7964,

Superseding Nos. 5351 and 5375.

I. C. C. No. 828,

Superseding No. 227.

FREIGHT TARIFF

OF THE

CHESAPEAKE AND OHIO RAILWAY COMPANY

cancelled I.C.C-1247 EASTBOUND

12/25/99

ON

NEW RIVER COAL—Car Loads,

MINIMUM WEIGHT TWELVE TONS.

FROM NEW RIVER DISTRICT.

MAIN LINE.	MAIN LINE—Con.	Loop Cross Branch.	South Side Branch.	Keeney's Creek Branch.
Quinnimont, W. Va.	Bury, W. Va.	(Intersecting at Thurmond, W. Va.)	(Intersecting at Thurmond, W. Va.)	(Intersecting at Hinton, W. Va.)
Prince, "	Central, "			
McKendree, "	Fire Creek, "	So. Thurmond, W. Va.	Thurmond Mine, W. Va.	Hinton, W. Va.
Slatey, "	East Sewell, "	Harvey, "	Rend Run Mine, "	Ballengee, "
Buffalo, "	Sewell, "	Red Star, "	Red Ash Mine, "	Meadow, "
Alaska, "	Caperton, "	Glen Jean, "	Brooklyn Mine, "	Dolan, "
Claremont, "	Kenney's Creek, "	Collinsville, "	Thurmond Mine, "	Carpenter, "
Beechwood, "	Nuttall, "	Dun Lane, "	Brown Mine, "	Loudon, "
Stone Cliff, "	Pax Mills, "	Turkey Knob, "		
Riverview, "	Eisen, "	Macdonald, "		
Thurmond, "	Sunnyside, "			
Thurmond, "	Dayron, "			
Rend Run, "	Hawk's Nest, "			
				Hawk's Nest Branch. (Intersecting at Keeney's Creek, W. Va.)
				Ansted, W. Va.

Run of Mine, KANAWHA COAL, Car Loads,

cancelled I.C.C-988 & 1128

MINIMUM WEIGHT TWELVE TONS.

5/1/99

FROM KANAWHA DISTRICT.

MAIN LINE.	Main Line—Con.	Main Line—Con.	Main Line—Con.	Otter Creek Branch.	GAULEY BRANCH.
Gauley, W. Va.	Forrest Hill, W. Va.	Consolidated, W. Va.	Black Cat W. Va.	(Intersecting at Coalburg, W. Va.)	(Intersecting at Cotiga, W. Va.)
Kanawha Falls, "	St. Clair, "	Handley, "	East Bank, "	Dry Branch, W. Va.	K. & M. Jct., W. Va.
Deep Water, "	Eagle, "	Dego, "	Coalburg, "	Borda, "	Burdette, "
Digby, "	Edgewater, "	Paint Creek, "	Wolfpen Junction, "	Fairfield, "	Nicholas Road, "
Mt. Carbon, "	Crescent, "	Gordon's "	Brownstown, "	Cane Fork, "	Helvetia, "
Powelton, "	Montgomery, "	Crown Hill "	Spring Hill, "	Alum Lick, "	Vaughan, "
Diamond, "	Union, "	Belmont, "		Leewood, "	Marvin, "
				Acme, "	Greendale, "

TO

STATIONS ON CHESAPEAKE & OHIO RAILWAY, EASTBOUND.

RATES PER TON OF 2240 POUNDS.

For rates on Domestic Coal, see Tariff No. 7965, I.C.C. No. 827

Issued Cincinnati, O., December 27, 1898. Effective January 2, 1899.

G. W. BENJAMIN,
General Coal Freight Agent, C. & O. Ry.,
Cincinnati, O.

Issued by
JNO. F. ORNDORFF,
Asst General Freight Agent, C. & O. Ry.,
Cincinnati, O.

500

TO	FROM New River District.	FROM Kanawha District.
MAIN LINE, Peninsula Div.		
Norfolk ..... Va		
Portsmouth ..... "		
Fort Monroe ... "		
Phœbus ..... "	1 55	1 70
Hampton ..... "		
*Freemans ..... "		
†Newport News.. "		
*Old Point Jct.. "		
Morrison ..... "		
*Mellen ..... "		
*Menchville ..... "		
Oriana ..... "		
*Reservoir ..... "		
Lee Hall ..... "		
*Booth ..... "		
Grove ..... "		
Williamsburg... "		
*Jones ..... "		
*Newman's ..... "		
Ewell ..... "		
Lightfoot ..... "	1 85	2 00
*Vaiden's ..... "		
Toano ..... "		
Diascund ..... "		
Laneva ..... "		
Walker's ..... "		
*Windsor Shades "		
Providence Forge"		
*Mountcastle ..... "		
*Nance ..... "		
Roxbury ..... "		
*Turner's ..... "		
Elko ..... "		
*Poplar Springs.. "		
*Fort Lee ..... "		
*Gibson ..... "		
*Fulton Brick Yd. "		
*Burton ..... "	1 50	1 65
*Fulton ..... "		
Richmond, prop. "		
RICHMOND DIVISION.		
*Bevins ..... Va		
*Brookland ..... "		
*Strawberry Hill "		
*Hunsleit ..... "		
Ellerson ..... "		
Atlee ..... "		
*Puttomoi ..... "		
Ashcake ..... "	1 75	1 90
Peake ..... "		
*Cady ..... "		
Hanover ..... "		
*Blanton ..... "		
*Wickham ..... "		
*Little River .... "		
*Cresent ..... "		
Doswell { proper...	1 75	1 90
Doswell { beyond	1 35	1 50
Verdon ..... "		
*Noel ..... "		
Hewlett ..... "		
*Holliday ..... "		
*Mattico ..... "		
Beaver Dam ... "	1 75	1 90
Lyles ..... "		
Bumpers ..... "		
Bockets ..... "		
*Frederick's Hall "		
Pendleton ..... "		

TO	FROM New River District.	FROM Kanawha District.
RICHMOND DIV.—Con.		
Mineral ..... Va		
Louisa ..... "		
*Crank ..... "		
Trevilian's ..... "	1 75	1 90
Green Spring... "		
Melton ..... "		
Gordonsville.... "		
Madison ..... "		
Orange ..... "	1 50	1 65
Lindsay ..... "		
Cobham ..... "	1 75	1 90
Campbell ..... "		
*Rugby ..... "		
Keswick ..... "		
Shadwell ..... "	1 75	1 90
*Masale ..... "		
*Moore's Creek.. "		
Charlottesville)	1 25	1 40
Union Station.)		
*Woods ..... "		
Ivy ..... "		
Mechum's River	1 70	1 95
Crozet ..... "		
Greenwood ..... "		
Afton ..... "		
Basic ..... "		
Waynesboro .... "	1 60	1 75
Fishersville..... "		
*Brand ..... "		
Staunton ..... "	1 25	1 40
*La Grange ..... "		
*Snyder's ..... "		
Swoope ..... "		
*Christian's..... "		
Buffalo Gap..... "		
*North Mountain "	1 40	1 55
*Chapin ..... "		
Petrol..... "		
Augusta Springs "		
Craigsville ..... "		
Bell's Valley.... "		
Goshen ..... "		
*Panther ..... "		
Millboro ..... "		
*Mason's Tunnel "		
*Crane..... "		
*Copeland ..... "		
*Griffith..... "		
Longdale..... "		
Clifton Forge... "		
HUNTINGTON DIVISION.	1 90	1 15
Low Moor..... Va		
*Rich Patch Jct.. "		
Covington..... "		
*McDowell..... "		
Dunlap..... "		
Backbone..... "		
*Jerry's Run..... "		
*East Alleghany "		
Alleghany..... "		
Tuckahoe.... W.Va	90	1 05
White Sulphur.. "		
*Greenbrier ..... "		

TO	FROM New River District.	FROM Kanawha District.
HUNTINGTON DIV.—Con.		
*Harts Run... W.Va		
Caldwell..... "		
Ronceverte ..... "		
*Rockland..... "		
Fort Spring..... "	90	1 05
*Snowflake..... "		
*Half Way..... "		
Alderson..... "		
*Mohler ..... "		
*Wolf Creek..... "		
Stock Yards..... "		
Lowell ..... "		
Talcott..... "		
*Don ..... "	75	90
Hinton ..... "		
*Brooks ..... "		
Sandstone..... "		
Meadow Creek.. "		
Glade ..... "	‡25	‡50
Quinnemont.... "		
Prince ..... "		
*McKendree..... "		
*Slater ..... "		
*Buffalo..... "		
*Alaska..... "		
*Beechwood ..... "		
Stone Cliff ..... "		
Thurmond..... "		
*Dimmock ..... "		
Beury ..... "		
*Central ..... "	‡25	‡50
Fire Creek..... "		
*East Sewell..... "		
Sewell ..... "		
Caperton ..... "		
*Keeney's Creek.. "		
Nuttall..... "		
Fayette..... "		
*Elmo ..... "		
*Sunnyside..... "		
*Gaymont..... "		
Hawk's Nest..... "		
Cotton Hill..... "		
Gauley ..... "		
Kanawha Falls.. "		
Deep Water..... "		
*Digby ..... "		
Mt Carbon ..... "		
*Powellton ..... "		
*Diamond ..... "		
*Forrest Hill..... "		
*St. Clair..... "		
Eagle..... "		
*Edgewater..... "		
*Crescent..... "	‡50	‡25
Montgomery ... "		
*Union..... "		
*Consolidated ... "		
Handley..... "		
*Chesapeake..... "		
Paint Creek..... "		
*Gordon's ..... "		
*Crown Hill..... "		
*Belmont..... "		
*Black Cat ..... "		
East Bank..... "		
Coalburg ..... "		
Winifreda Jct.. "		

*No agent. Freight must be prepa...
†Note.—On coal for bunker deliv... an additional charge of 75 cents per ton 2240 lbs. for terminal service.
‡Minimum charge $5.00 per ca...

TO	FROM New River District.	FROM Kanawha District.
WARM SPRINGS VALLEY RR.		
Intersecting at Covington, Va.		
*Damron ..... Va		
*Falling Springs "		
*Natural Well... "		
*Cedar Creek.... "	1 50	1 65
*Kincaid ..... "		
*Callison ..... "		
*Groce ..... "		
Hot Springs.... "		
JAMES RIVER DIVISION.		
*Haxall ..... Va		
*Water Works .. "		
*Korah ..... "		
*Westham..... "		
Lorraine ..... "		
*Tuckahoe..... "		
Vinita ..... "		
*Harris ..... "		
Boscobel ..... "		
Sabot ..... "		
*Strange ..... "		
Lee ..... "		
*State Farm ..... "		
*Thorncliff..... "		
Malden's ..... "		
Irwin..... "		
*Pleasanton ..... "		
Rock Castle..... "		
West View ..... "		
Stokes ..... "		
Pemberton..... "		
*Sand Pit ..... "	1 75	1 90
*Howard's Neck. "		
Elk Hill..... "		
Island ..... "		
Columbia..... "		
*Rivanna..... "		
Boswell..... "		
Bremo ..... "		
Shores ..... "		
Hardware ..... "		
Payne ..... "		
*Nicholas ..... "		
Scottsville..... "		
Hatton ..... "		
*Drewry ..... "		
Warren ..... "		
*McCullough..... "		
Howardsville... "		
Highland..... "		
Manteo..... "		
Worminster..... "		
Midway ..... "		

TO	FROM New River District.	FROM Kanawha District.
JAMES RIVER DIV.—Con.		
Wingina ..... Va		
Norwood ..... "		
Buffalo Springs. "		
*Gay ..... "		
*Greenway..... "		
*Caskie ..... "		
Gladstone ..... "		
*Allen's Creek... "	1 75	1 90
*Riverville..... "		
Walker's Ford.. "		
Stapleton ..... "		
Galt's Mill..... "		
*Joshua Falls..... "		
*Kellys..... "		
Tyro ..... Va	1 50	1 65
Lynchburg { James River / Canal }	1 50 / 95	1 65 / 1 10
*Rockets ..... Va		
Abert ..... "		
Holcomb's Rock.. "		
Pearch ..... "		
Coleman ..... "		
Waugh..... "		
Big Island..... "		
*Major ..... "		
*Snowden..... "		
Balcony Falls... "		
Glasgow..... "		
*Locher's..... "		
Greenlee ..... "		
*Natural Bridge.. "		
Gilmore Mills... "		
*Alpine ..... "		
Indian Rock..... "	1 40	1 55
*Dillon..... "		
Buchanan ..... "		
Springwood..... "		
*Saltpetre ..... "		
*Burke ..... "		
*Salisbury ..... "		
Eagle Mountain "		
Bessemer ..... "		
Gala ..... "		
*Big Hill..... "		
*Price's Bluff.... "		
*Haden's ..... "		
*Baldwin ..... "		
Glen Wilton.... "		
Lick Run..... "		
Iron Gate..... "		

TO	FROM New River District.	FROM Kanawha District.
LEXINGTON BRANCH.		
Intersecting at Balcony Falls, Va.		
Miller's ..... Va		
*West Miller's... "		
*M. & W. Junc... "	1 55	1 65
*Loch Laird..... "		
Buena Vista ..... "	1 30	1 45
*Scottsville ..... "		
*South River .... "		
East Lexington.. "	1 50	1 65
Lexington ..... "		
RICHMOND & W. POINT.		
Intersecting at Manchester, Va.		
*New Castle... Va		
*Dutch Gap..... "	2 00	2 15
Arvonia ..... "		
Fenton ..... "		
*Williams ..... "		
Johnson ..... "		
*Alpha..... "		
*Newton ..... "	2 25	2 40
White Hall..... "		
*Dillwyn ..... "		
*Smith's ..... "		
*Selling ..... "		
*Ramey ..... "		
MIDDLE R. R.		
Intersecting at Warren, Va.		
Earnest..... Va		
*Cole..... "	2 00	2 15
Alberene..... "		
SAN VERA BRANCH.		
Intersecting at Rosney, Va.		
*Wingina..... Va		
*Shells..... "		
*Norton..... "		
*Pine..... "		
*Lucania..... "	1 90	2 05
Ortskany..... "		
*Dickinson..... "		
*Barbour's Creek "		
New Castle..... "		

* No Agent. Freight must be prepaid.

AN ACT to prevent railroad companies from buying and selling coal or coke, and to prevent discriminations.

[Passed February 15, 1895.]

Be it enacted by the Legislature of West Virginia:

1. It shall be unlawful for any railroad corporation to engage, directly or indirectly, in the business of buying and selling coal or coke, or to promise, pledge or lend its credit, money or other property or thing of value to another, either natural or corporate, engaged in such business, but nothing herein shall prevent such corporation from purchasing such articles for its own consumption, or when it is the owner of any such commodities from selling and shipping the same; Provided, in doing so, such corporation shall not discriminate in rates, distribution of cars or otherwise against other shippers of like commodities on its lines; and, provided further, that when such company has the right to sell either of such commodities, and is unable from any cause to fill any bona fide contracts it may have made to supply such commodities, or either of them, it may purchase them to enable it to fill such contracts.

2. Every railroad corporation along whose line of railroad the industries of mining coal or manufacturing coke is carried on, shall without discrimination between or amongst shippers, and without unnecessary delay, make a reasonable provision for the transportation of all such coal and coke offered for transportation over its railroad, and no such railroad corporation shall discriminate in rates, distribution of cars or otherwise against or among shippers of coal or coke offered for shipment on its line or lines.

3. The circuit and criminal courts of every county through or into which the railroad of any such railroad corporation violating any or either of the provisions of this act may pass, shall have concurrent jurisdiction of all the offences under and violations of the provisions of this act.

4. Any railroad corporation or officer or agent thereof who

shall knowingly and wilfully violate any of the provisions of this act, shall for each and every such offense, be deemed guilty of a misdemeanor, and upon indictment and conviction thereof, shall be fined not less than fifty nor more than five hundred dollars.

State of West Virginia.

Certificate.

I, Wm. M. O. Dawson, Secretary of State of the State of West Virginia, do hereby certify that the foregoing writing is a true, full and correct copy of An Act passed by the Legislature of West Virginia, February 15, 1895, entitled, "An Act to prevent railroad companies from buying and selling coal or coke, and to prevent discriminations."

Given under my hand and the great seal of the said State, at the city of Charleston, this fifteenth day of October, 1903.

WM. M. O. DAWSON,
Secretary of State.

State of Virginia,
City of Richmond, } ss.

L. F. Sullivan being duly sworn deposes and says as follows: That he is the Comptroller of the Chesapeake and Ohio Railway Company, in charge of its accounts, and has been such Comptroller since November 15, 1897; that the C. & O. Coal and Coke Company, of which C. J. Wittenberg is President, has not rendered to the Chesapeake and Ohio Railway Company any account of sales or other statement of the coal delivered by it in the months of May, June and July, 1903, to the New York, New Haven and Hartford Railroad Company; that all deliveries of said coal were immediately suspended by the direction of the President of the Chesapeake and Ohio Railway Company after the hearing before the Interstate Commerce Commission on July 3, 1903, except that 4,309 tons, then in transit, were de-

livered on July 6, 1903, and that no statements have been rendered or settlements made by the said C. & O. Coal and Coke Company for or on account of said coal.

This affiant further says that when he was instructed to make up the statement dated the 6th day of November, 1903, and filed in the case of the Interstate Commerce Commission v. the Chesapeake and Ohio Railway Company and the New York, New Haven and Hartford Railroad Company, headed "statement of coal delivered to New York, New Haven and Hartford R. R. Co. and cost thereof, including charges for delivery under contract effective July 1, 1897," he was informed by the Counsel of the Chesapeake and Ohio Railway Company that the Counsel for the Interstate Commerce Commission had requested that there should be included in said statement the tonnage for May, June and July, 1903, and that not having the vessel freight and lighterage, cost of discharging, and insurance, in consequence of not having received any statement or account from the C. & O. Coal and Coke Company as hereinabove set forth, and which was necessary in order to complete said statement, he, the said affiant, sent to the office of the said C. & O. Coal and Coke Company, in the City of New York, and obtained therefrom the figures for the said months of May, June and July, 1903, that appear upon said statements.

L. F. Sullivan.

Subscribed and sworn to before me in my said City of Richmond this 27th day of November, 1903.

Given under my hand and seal this day and year above written.

Columbus A. Canepa,
Notary Public.

My Commission expires on the 17th day of September, 1907.
No stamp required.

State of Virginia.
City of Richmond, } ss.

J. W. Hopkins, being duly sworn deposes and says as follows: That he is the General Agent of the C. & O. Coal Agency Company and has been such agent since about the 1st day of June, 1899; that between January 1, 1899 and June 1, 1899, he was the General Agent of the New River Consolidated Coal Company, and prior thereto he was connected with what was known as the Fuel Department of the Chesapeake and Ohio Railway Company, but that he has had no connection with the Chesapeake and Ohio Railway Company since the 1st day of June, 1899; that acting under instructions of Mr. M. E. Ingalls, President of the Chesapeake and Ohio Railway Company, he made the contract of December 11, 1896, with J. L. Beury, the Laurel Creek Coal and Coke Company and the Greenwood Coal and Coke Company for coal to supply the tonnage called for by the contract of December 3, 1896, between the Chesapeake and Ohio Railway Company and the New York, New Haven and Hartford Railroad Company; that this contract with the New York, New Haven and Hartford Railroad Company was not a secret transaction, but was widely known from the beginning to all of the coal operators in the New River and Kanawha Districts; that said contract was considered an exceedingly beneficial one, both to the railway company and the territory served by it and worked no discrimination or disadvantage against either the New River or the Kanawha District, or any coal operator or shipper of coal in either of said districts; that when the said contract was made with the New York, New Haven and Hartford Railroad Company the C. & O. Coal Agency Company was the sole shipper of coal destined beyond the capes from the New River and Kanawha Districts, and as such shipper handled all the coal destined beyond the capes shipped from said districts until about April, 1900, and was the sole handler of all coal delivered under the contract with the New York, New Haven and Hartford Railroad Company until June 7, 1902, when

deliveries under said contract were suspended in consequence of the coal miners strike; that this suspension of shipments caused a shortage undelivered on said New Haven contract, at the date of its expiration, July 1, 1902, of about sixty thousand tons; that in the Spring of 1903, the President of the Chesapeake and Ohio Railway Company requested the New River operators to complete the delivery of this sixty thousand tons shortage as aforesaid on said contract, but I understand they declined; that the said President of the Chesapeake and Ohio Railway Company then proposed to the C. & O. Coal Agency Company, of which this affiant was, and is, the General Agent, as aforesaid, to complete the delivery of this sixty thousand tons in Kanawha coal, but the said C. & O. Coal Agency Company was not able to accept this proposal because it did not handle a sufficient output of Kanawha coal to enable it to do so after supplying its existing contracts, and that thereupon, I understand, an arangement was made by the Chesapeake and Ohio Railway Company with the Kanawha Fuel Company to furnish this sixty thousand tons shortage on said New Haven contract as aforesaid; that the delivery of this sixty thousand tons of coal by the Kanawha Fuel Company, to the best of my knowledge and belief, worked no discrimination or disadvantage whatever against either the Kanawha or New River Districts, or against any shipper of coal in either district, and the fact that the said Kanawha Fuel Company had undertaken to supply this sixty thousand tons of coal was well known to all coal operators and shippers in both of said districts.

This affiant further says that he is acquainted with W. C. Bullitt, who is a member of the firm of Castner, Curran and Bullitt, which firm is the principal shipper of coal from the Pocahontas fields on the line of the Norfolk and Western Railroad, and is a rival in the shipment of coal of the C. & O. Coal Agency Company; that he has read what purports to be the affidavit of the said W. C. Bullitt, dated November 13, 1903, and filed in the case of the Interstate Commerce Commission v. the Chesapeake and Ohio Railway Company and the New York, New Haven and Hartford Railroad Company, in the United

States Circuit Court at Lynchburg, which affidavit is as follows:

"That in the month of June, 1903, he applied to J. W. Hopkins of Richmond, Virginia, for a price on Kanawha coal; that said Hopkins is, and for many years has been, a large handler of coal from the line of the Chesapeake and Ohio Railway Company; that in reply to his inquiry said Hopkins offered to sell to him for shipment to Newport News and beyond the capes such quantity of Kanawha coal as said affiant might wish to buy, not to exceed, however, one thousand (1,000) tons per day; that the price named by said Hopkins was satisfactory to said affiant had he been able to secure the reduction in freight rate which he thereupon applied for to the Chesapeake and Ohio Railway Company."

That in the spring and summer of 1903, he had several conversations with the said Bullitt, as was usual when they happened to meet, or met by appointment, or conversed by telephone, in regard to the coal market conditions and prices of coal; that he may have said in such conversations that Kanawha and Norfolk and Western coal was being offered at attractive prices, and he may have said that he could sell Kanawha coal at a figure which was satisfactory, but he did not offer to sell the said Bullitt "for shipment to Newport News and beyond the capes such quantity of Kanawha coal as he might wish to buy, not to exceed one thousand (1,000) tons per day," or in any other quantity; that he would have undoubtedly quoted the said Bullitt prices on coal if he had asked for them, and would have been glad to have made a sale of coal to him, but he did not entertain the idea, if a quotation was asked for by said Bullitt, that it was for the purpose of making an actual purchase, or that anything he may have said in regard to prices of coal had been construed by the said Bullitt as an offer for an actual sale; that he has never sold Kanawha coal to the said Bullitt, or his firm, or been asked for prices on said coal with the understanding that the said Bullitt contemplated becoming a purchaser.

J. W. Hopkins.

Subscribed and sworn to before me this the 27th day of November, 1903.

Given under my hand and official seal this the day and year above named.

A. J. T. TREVVETT.
Notary Public.

My Commission expires February 18, 1905.
No stamp required.

State of Virginia,
City of Richmond, } ss.

E. D. Hotchkiss, being first duly sworn deposes and says that he is the General Freight Agent of the Chesapeake and Ohio Railway Company as set out in a previous affidavit made by him and heretofore filed in the case of the Interstate Commerce Commission against the Chesapeake and Ohio Railway Company and the New York, New Haven and Hartford Railroad Company, in the United States Circuit Court at Lynchburg; that on or about the 12th day of April, 1895, he caused to be published through freight tariff No. 5177, dated April 10, 1895, an original of which has been heretofore filed in the above entitled case; that he caused printed copies thereof to be duly delivered to L. S. Macon, who, at that time was the mailing clerk employed in the office of the said E. D. Hotchkiss, with instructions to mail in accordance with the usual mailing list for such coal tariffs, and that the records in his office show that the said Macon did on the 12th day of April, 1895, receive and send out said Through Freight Tariff No. 5177, and that the records further show that a copy was on that day mailed to Mr. C. C. McCain, then Auditor of the Interstate Commission at Washington, D. C. Affiant further says that he has read the affidavit of Mr. J. M. Smith, Auditor of the Interstate Commerce Commission, dated November 14, 1903, and filed by the complainant in the above entitled case. Affiant further says that said

Through Freight Tariff No. 5177, and the Tariff entitled: Chesapeake and Ohio Railway. Joint Freight Tariff No. 7967. Superseding No. 5177 "being I. C. C. No. 829, effective January 2, 1899, and tariff headed: Chesapeake and Ohio Railway. Joint Freight Tariff No. 7994. Superseding No. 7967," being I. C. C. No. 845, effective January 3, 1899, and remaining in effect until the 8th day of March 1899, show the tariff rates applicable upon coal shipped from the New River or Kanawha Districts of West Virginia to New Haven or points in New England, notwithstanding the fact that the said tariffs appear to be to New York, N. Y. Affiant further says that the three tariffs last above named show the rates under which the coal was delivered to the New York, New Haven and Hartford Railroad Company; that said tariffs show upon their face that they were operative "From mines to Newport News and in cargo quantities by vessel from Newport News to destination, subject to ocean contracts and charters," and while the said tariff sheets show on the face thereof "to New York, N. Y.," yet there being only one shipper of coal beyond the capes, as explained in the previous affidavit of this affiant, the said rates nevertheless applied to coal shipped to New England points if the destination of said coal should be changed by the shipper to said points prior to the sailing of the vessel from Newport News.

Affiant further says that C. & O. Ry. Freight tariff on coal and coke No. 5375, I. C. C. No. 227, did not apply to the transportation by the Chesapeake and Ohio Railway to Newport News on coal shipped from the New River and Kanawha Districts to New Haven and other New England points, but as shown upon its face, was the local tariff in effect and applicable on domestic shipments, and that the rate of $2.00 to Newport News was the local domestic rate on New River steam coal per ton of 2240 pounds and should not be added to the prevailing ocean rate to New Haven and other New England points to arrive at the through rate on coal destined beyond the capes.

Affiant further says that C. & O. Ry. Freight Tariff No. 7964, surperseding No. 5375, being I. C. C. No. 826, supersed-

ing No. 227, in like manner shows the local domestic rate of $1.55 from the New River District to Newport News per ton of 2240 pounds, and said rate of $1.55 should not be added to the prevailing ocean rate to New Haven and other New England points in order to arrive at the through rate on coal destined beyond the capes. Affiant hereto attaches a copy of C. & O. Ry. Tariff No. 7965, also superseding No. 5375, being I. C. C. No. 827, also superseding No. 227, which shows the rate on domestic splint coal, carload, minimum weight 12 tons, per ton of 2240 pounds from the Kanawha District to Newport News, of $2.25 instead of $1.70 as indicated on I. C. C. No. 826, but it will be noted that the said tariff I. C. C. No. 827 is applicable solely from the Kanawha District.

Furthermore affiant says that the three tariffs No. 5177, No. 7667, superseding No. 5177, being I. C. C. No. 829, and No. 7994, superseding No. 7967, being I. C. C. No. 845, superseding No. 829, are regularly followed by C. & O. Ry. Freight Tariff No. 8155, superseding No. 7994, being I. C. C. No. 911, superseding No. 845, and C. & O. Ry. Freight Tariff No. 8407, superseding No. 8135, being I. C. C. No. 1003, superseding I. C. C. No. 911, and C. & O. Ry. Freight Tariff No. 9179, superseding No. 8407, being I. C. C. No. 1324, superseding No. 1003, and C. & O. Ry. Freight Tariff No. 9231, superseding No. 9179, being I. C. C. No. 1334, superseding No. 1324, and C. & O. Ry. Freight Tariff No. 9322, being I. C. C. No. 1347, and C. & O. Ry. Freight Tariff No. 9647, superseding Nos. 9231 and 9322, being I. C. C. No. 1428, superseding Nos. 1334 and 1347, and C. & O. Ry. Freight Tariff No. 9699, superseding No. 9647, being I. C. C. No. 1454, superseding No. 1428, and C. & O. Ry. Freight Tariff No. 10332, superseding No. 9699, being I. C. C. No. 1726, superseding No. 1454, and C. & O. Ry. Freight Tariff No. 10850, superseding No. 10332, being I. C. C. No. 2200 superseding No. 1726, and C. & O. Ry. Freight Tariff No. 10932, superseding No. 10850, being I. C. C. No. 2286, superseding No. 2200, and C. & O. Ry. Freight Tariff No. 11032, superseding No. 10932, being I. C. C. No. 2374 superseding No.

2286, which carry the rates up to the present time, Tariff No. 11032, I. C. C. No. 2374 being the tariff rates at present in effect.

Affiant further states that all shipments of coal destined beyond the Capes are in cargo quantities; that the tariffs, copies of which are filed with the affidavit aforesaid of the said J. M. Smith, being C. & O. Ry. Freight Tariff No. 5375, I. C. C. No. 227, and C. & O. Ry. Freight Tariff No. 7964, being I. C. C. No. 826 are not for cargo quantities, but show upon their face that they are confined to shipments of coal in carload lots, while C. & O. Ry. Through Freight Tariff No. 5177, and C. & O. Ry. Through Freight Tariff No. 7967, being I. C. C. No. 829, and C. & O. Ry. Joint Freight Tariff No. 7994, being I. C. C. No. 845, show upon their face that they are through rates, and applicable to cargo quantities. All the tariffs above referred to, subsequent to said I. C. C. No. 845, show upon their face "when destined beyond the capes," which is equivalent to shipments of coal in cargo quantities.

Affiant further states that the rates on bituminous coal destined beyond the capes per ton of 2240 pounds from the New River District, as shown by the tariffs filed by the Chesapeake and Ohio Railway Company and hereinbefore referred to are as follows: from April 15, 1895, to and including January 1, 1899, $2.25 per ton of 2240 pounds "Where in carloads—minimum weight 12 tons—from mines to Newport News, Va., and in cargo quantities, by ocean and vessel from Newport News to destination, *subject to ocean contracts and charters as arranged and accepted in advance of shipments*;" that for January 2, 1899 the rate was $2.00 per ton of 2240 pounds "In carloads—Minimum weight 12 tons—from mines to Newport News, Va., and in cargo quantities, by vessel from Newport News to destination, *subject to ocean contracts and charters as arranged and accepted in advance of shipment;* that from and including January 3, 1899 to March 8, 1899 the rate in effect was $1.75 from the mines named on the main line, and $1.80 from the mines named on the Branch lines, per ton of 2240 pounds "From

mines to Newport News, Va., and in cargo quantities by vessel from Newport News to destination, *subject to ocean contract and charters,*" said rates being also "subject to increase or reduction in accordance with prevalent rates under ocean contracts and charters as arranged and accepted in advance of shipment; shipper to have option to make his own ocean contract or charter, in which event the rail proportion of the cost of such through transportation shall be 60 per cent. of the above named rates of $1.75 and $1.80 to New York." Affiant further says that Tariff I. C. C. No. 911, effective March 8, 1899 shows the first rates specifically established to Newport News, applicable upon shipments of coal destined beyond the capes, and the rate from the New River District was as indicated 90 cents, and thereafter said rates have been as follows:

May 13, 1899, to January 17, 1900,	$ .80 cents
January 17, 1900, to February 1, 1900,	$ .85 cents
February 1, 1900, to April 2, 1900,	$1.00
April 2, 1900, to April 1, 1901,	$1.15
April 1, 1901, to April 1, 1903,	$1.25
April 1, 1903, to the present date,	$1.35

and the rate from the Kanwha District from April 1, 1903 to the present date is $1.45 per ton.

E. D. Hotchkiss.

Subscribed and sworn to before me this the 27th day of November 1903.

Given under my hand and official seal this the day and year above named.

Columbus A. Canepa,
Notary Public.

No stamp required.

My Commission expires September 17, 1907.

TO BE POSTED IN TWO CONSPICUOUS PLACES AT EACH FREIGHT-SHIPPING STATION.

Authority No. 3284 CHANGE: REDUCTION.	C. & O. R'y Freight Tariff No. 7965 SUPERSEDING No. 5375.	I. C. C. No. 827 Superseding No. 227

FREIGHT TARIFF

OF THE

CHESAPEAKE AND OHIO RAILWAY COMPANY

EASTBOUND

ON

Domestic Splint Coal--Car Loads

MINIMUM WEIGHT TWELVE TONS, PER TON 2,240 POUNDS.

FROM KANAWHA DISTRICT.

MAIN LINE.		MAIN LINE—Con.		CABIN CREEK BRANCH (Intersecting at Coalburg, W. Va.)	
Gauley,	W. Va.	Consolidated,	W. Va.	Dry Branch,	W. Va.
Kanawha Falls,	"	Handley,	"	Ronda,	"
Deep Water,	"	Dego,	"	Fairfield,	"
Digby,	"	Paint Creek,	"	Cane Fork.	"
Mt. Carbon,	"	Gordon's,	"	Alum Lick,	"
Powellton,	"	Crown Hill,	"	Leewood,	"
Diamond,	"	Belmont,	"	Acme,	"
Forrest Hill,	"	Black Cat,	"		
St. Clair,	"	East Bank,	"	GAULEY BRANCH. (Intersecting at Gauley, W. Va.)	
Eagle,	"	Coalburg,	"		
Edgewater,	"	Winifrede Junction	"	K. & M. Junction,	W. Va.
Crescent,	"	Brownstown,	"	Burdette,	"
Montgomery,	"	Spring Hill,	"	Nicholas Road,	"
Union,	"			Belva,	"
				Vaughan,	"
				Morris,	"
				Greendale,	"

TO

Stations on Chesapeake & Ohio Railway, Eastbound.

Issued Cincinnati, O., December 27, 1898. Effective January 2, 1899.

G. W. BENJAMIN,
General Coal Freight Agt. C. & O. Ry.,
Cincinnati, O.

Issued by
JNO. F. ORNDORFF,
Ass't General Freight Ag. C. & O. Ry.
Cincinnati, O.

[In the original the following is in tabular form :]

MAIN LINE—Peninsula Division.	Rate
To Norfolk, Portsmouth, Fort Monroe, Phœbus, Hampton, *Freemans, Newport News, *Old Point Jct., Morrison, *Mellen, *Menchville, Oriana, *Reservoir, Lee Hall, *Bocth, Grove, Williamsburg, *Jones,*Newman's, Ewell, Lightfoot, *Vaiden's, Toano, Diascund, Lanexa, Walker's, *Windsor Shades, Providence Forge,*Mouncastle,*Nance, Roxbury, *Turner's, Elko, *Poplar Springs, *Fort Lee, *Gibson,*Fulton Brick Yd., *Burton,*Fulton, Richmond, Va.,	2.25
Richmond Division.	
*Belvins, *Brookland, *Strawberry Hill, *Hunslett, Ellerson, Atlee, *Pottomoi, Ashcake, Peake, *Cady, Hanover, *Blanton, *Wickham, *Little River, *Garnett, Doswell, Verdon, *Noel, Hewlett, *Holliday, *Mantico, Beaver Dam, Tylers, Bumpass, Buckner, *Frederick's Hall, Pendleton, Mineral, Louisa, *Crank, Trevilians, Green Springs, Melton, Gordonsville, Madison, Orange, Lindsay's, Cobham, Campbell, Rugby, Keswick, Shadwell, *Massie, *Moore's Creek, Charlottesville, Union Station, *Woods, Ivy, Mechum's River, Crozet, Greenwood, Afton,Va.	2 25
Basic, Waynesboro, Fishersville, *Brand, Va.,	2.10
Staunton, *LaGrange, *Snyder's, Va.,	2.00
Swoope's, *Christian's, Buffalo Gap, *North Mountain, *Chapin, Ferrol, Augusta Springs, Craigsville, Bell's Valley, Va.,	1.90
Goshen, *Panther, Millboro, *Mason's Tunnel, *Crane, *Copeland, *Griffith, Longdale, Clifton Forge, Va.,	1.20
Huntington Division.	
Low Moor, *Rich Patch Junction, Covington, *McDowell, Dunlap, Backbone, *Jerry's Run, *East Alleghany, Alleghany, Va.; Tuckahoe, White Sulphur, *Greenbrier, *Harts Run, Caldwell, Ronceverte, *Rockland, Fort	

To	Rate
Spring, *Snowflake, *Half Way, Alderson, *Mohler, *Wolf Creek, W. Va.	1.20
Stock Yards, Lowell, Talcott, *Don, Hinton, *Brooks, Sandstone, Meadow Creek, W. Va.	1.00

Warm Springs Valley Branch.

(Intersecting at Covington, Va.)

*Dameron, *Falling Springs, *Natural Well, *Cedar Creek, *Kincaid, *Callison, *Groce, Hot Springs, Va. . . .	1.80

James River Division.

*Haxall, *Water Works, *Korah, *Westham, Lorraine, *Tuckahoe, Vinita, *Harris, Boscobel, Sabot, *Strange, Lee, *State Farm, *Thorncliff, Maiden's, Irwin, *Pleasanton, Rock Castle, West View, Stokes, Pemberton, *Sand Pit, *Howard's Neck, Elk Hill, Island, Columbia, *Rivanna, Boswell, Bremo, Shores, Hardware, Payne, *Nicholas, Scottsville, Hatton, *Drewry, Warren, *McCullough, Howardsville, Highland, Manteo, Warminster, Midway, Wingina, Norwood, Buffalo Springs, *Gay, *Greenway, *Caskie, Gladstone, *Allen's Creek, *Riverville, Walker's Ford, Stapleton, Galt's Mill, *Joshua Falls, *Kelley's, Tyree, Lynchburg, *Reusen's, Abert, Holcomb Rock, Pearch, Va., ...	2.25
Coleman, Waughs, Big Island, *Major, *Snowden. . .	2.20
Balcony Falls, Glasgow, *Locher's, Greenlee, *Natural Bridge, Gilmore Mills, *Alpine, Indian Rock, *Dillon, Buchanan, Springwood, *Saltpetre, *Burke, *Salisbury, Eagle Mountain, Bessemer, Gala, *Big Hill, *Price's Bluff *Haden's, *Baldwin, Va.	2.00
Glen Wilton, Lick Run, Iron Gate, Va.	1.00

Lexington Branch.

(Intersecting at Balcony Falls, Va.)

Miller's, *West Miller's, *N. & W. Junction, *Loch Laird, Buena Vista, *Stratton's, *South River, East Lexington, Lexington, Va., ...	2.00

Buckin ham R. R. Branch.

(Intersecting at Bremo, Va.)

For	Rate
*New Canton, *Dutch Gap, Arvonia, Va.	2.50
Penlan, *Williams, Johnson, *Alpha, *Newton, Whitehall, *Dillwyn, *Smith's, *Bolling, *Rosney, Va. . . .	2.75

Alberene R. R.

(Intersecting at Warren, Va.)

Esmont, *Coles, Alberene	2.50

Craig Valley Branch.

(Intersecting at Bessemer, Va.)

*Whittens, *Stulls, *Horton, *Parr, *Lemons, Oriskany, *Dickinson, *Barbour's Creek, New Castle, Va. . . .	2.20

*No agent. Freight must be prepaid.

State of Pennsylvania, County of York. } ss.

L. S. Macon, being first duly sworn deposes and says: That he is a resident of the City of Pittsburg, State of Pennsylvania; that in April, 1895, he was a resident of the City of Richmond, and employed in the office of E. D. Hotchkiss, General Freight Agent of The Chesapeake and Ohio Railway Company as Mailing Clerk; that he continued in such employment until on or about the 10th day of August, 1895, when he resigned his position with the Chesapeake and Ohio Railway Company to accept service elsewhere; affiant further says that his attention has been called to what purports to be an extract from an affidavit made by Mr. J. M. Smith, Auditor of the Interstate Commerce Commission, which extract reads as follows:

"Affiant says that his attention has been called to a tariff sheet filed by the Chesapeake and Ohio Railway Company in the case of the Interstate Commerce Commission against the Chesapeake and Ohio Railway Company and the New York, New Haven and Hartford Railroad Company, pending in the Circuit Court for the Western District of Virginia, which tariff sheet bears date 'Richmond, Virginia, April 10, 1895' and is 'Through

Freight Tariff No. 5177, rates of transportation taking effect April 15, 1895, via rail to Newport News, Virginia, thence via ocean and vessels, on bituminous coal,' 'from New River District' and 'from Kanawha District' to 'New York, N. Y.' which said tariff sheet is signed by E. D. Hotchkiss, General Freight Agent, and by W. P. Walker, Jr., Freight Traffic Manager. Affiant says that this tariff sheet has not been filed by The Chesapeake and Ohio Railway Company, or any one else, with the Interstate Commerce Commission."

Affiant says that he has procured from the file kept by him in the office of the General Freight Agent of the Chesapeake and Ohio Railway Company at Richmond, Virginia, the original tariff No. 5177 and the original mailing list, which he hereto attaches to this affidavit. Affiant says that the pencil writing thereon, to wit; "Recd. and sent out 4 - 12 - 95" are in his handwriting, and that the check marks on said list headed "Exchange list for joint tariff 5177" were made by him; affiant further says that on said 12th day of April, 1895, he mailed a copy of said tariff No. 5177 to C. C. McCain, and that C. C. McCain was at that time Auditor of the Interstate Commerce Commission at Washington in the District of Columbia; affiant further says that he sent out on the same day three copies of said tariff to each of the C. & O. agents in the New River and Kanawha Districts and Branches and to the C. & O. Agent at Newport News to be posted in accordance with the law. Affiant further says that he sent out the copies as indicated to each of the other parties named in said list headed "Exchange List for joint tariff 5177" on said 12th day of April, 1895.

L. S. Macon.

Subscribed and sworn to before me this 27th day of November, 1903.

Given under my hand and official seal the day and year aforesaid.

B. R. Paxton,
Notary Public.

My Commission expires April 18, 1907.

AUTHORITY NO. 1187

Chesapeake & Ohio Railway Company

TRAFFIC DEPARTMENT

RICHMOND, VA., April 10, 1895.

THROUGH FREIGHT TARIFF

Red and Sec Our A-

NO. 5177

Rates of Transportation, Taking Effect April 15, 1895.

Via Rail to Newport News, Va., thence via Ocean and Vessels.

ON

BITUMINOUS COAL,

Where in Car Loads—Minimum Weight 12 Tons—from Mines to Newport News, Va., and in Cargo Quantities, by Ocean and Vessel from Newport News to Destination, SUBJECT TO OCEAN CONTRACTS AND CHARTERS, AS ARRANGED AND ACCEPTED IN ADVANCE OF SHIPMENTS.

FROM NEW RIVER DISTRICT.

Quinnimont,	W. Va.	Glen Jean,	W. Va.	Masters,	W. Va.
Prince,	"	Dun Loup,	"	Dubree,	"
Alaska,	"	Turkey Knob,	"	Cavendish,	"
Claremont,	"	Macdonald,	"	Lookout,	"
Beechwood,	"	Echo,	"	Nuttall,	"
Stone Cliff	"	Central,	"	Fayette,	"
Thurmond,	"	Fire Creek,	"	Elmo,	"
Rush Run,	"	East Sewell,	"	Sunnyside,	"
Red Ash,	"	Sewell,	"	Gaymont,	"
Brooklyn,	"	Caperton,	"	Hawk's Nest,	"
Cunard,	"	Keeney's Creek,	"	Ansted	"
Harvey,	"	Boone,	"		
Red Star,	"	Ballanger,	"		

To New York, N. Y., $2.25 per Ton 2,240 Pounds.

FROM KANAWHA DISTRICT.

Gauley,	W. Va.	Handley,	W. Va.	Acme,	W. Va.
Deep Water,	"	Chesapeake,	"	Peerless,	"
Mt. Carbon,	"	Kanawha C. C. Co.,	"	Cabin Creek,	"
Powellton Junc.	"	Paint Creek,	"	Winifrede Junc.,	"
Forrest Hill,	"	Gordon's	"	Spring Hill,	"
Eagle,	"	Crown Hill,	"	Burdette,	"
Edgewater,	"	Belmont Coal Co.,	"	Nicholas Road,	"
Crescent,	"	Blacksburg,	"	Belva,	"
Montgomery,	"	East Bank,	"	Vaughan,	"
Union Coal Co.,	"	Coalburg,	"	Morris,	"
Con. Mining Co.,	"	Ronda,	"	Greendale,	"

To New York, N. Y., $2.50 per Ton 2,240 Pounds.

MANIFEST SOLID THROUGH VIA NEWPORT NEWS, VA.

Above Rates do not include Marine Insurance.

W. P. WALKER, JR.,
Freight Traffic Manager.

E. D. HOTCHKISS,
General Freight Agent.

500—3—4—'95.

Agents will receive three copies of this Tariff, two of which must be posted in two conspicuous places for public inspection.

A 1187

EXCHANGE LIST FOR JOINT TARIFF 5177.

Usual List, 17. √
C. C. McCain, 1. √
Agent New River and K. Districts and Branches, 3 each. √
J. W. Hopkins, 3. √
J. H. Lauten, Alaska, W. Va., 1. √
J. F. Jones, Sterling, W. Va., 1. √
O. C. Kubash, Stone Cliff, W. Va., 1. √
F. Howald, Rush Run, W. Va., 1. √
W. H. Holland, Nuttall, W. Va., 1. √
F. Boone, Nuttall, W. Va., 1. √
J. R. Seal, Fire Creek, W. Va., 1. √
J. F. Canvendish, Nuttall, W. Va., 1. √
J. H. Thayer, Thurmond, W. Va., 1. √
Deitz & Mastering, Lansing, W. Va., 1. √
J. A. Boone, Fayette, W. Va., 1. √
G. H. Caperton, Fire Creek, W. Va., 1. √
D. C. Boyce, Quinnimont, W. Va., 1. √
James Kay, Prince, W. Va., 1. √
F. P. Rothwell, Nuttall, W. Va., 1. √
J. D. Campbell, Winona, W. Va., 1. √
D. R. Bishop, Sunny Side, W. Va., 1. √
J. L. Beury, Beury, W. Va., 1. √
J. L. Beury, Beury, W. Va., 1. √
W. A. Burke, Staunton, Va., 1. √
J. Collins, Glen Jean, W. Va., 1. √
F. P. Walker, Dun Loup, W. Va., 1. √
J. B. McGuffin, Sewell, W. Va., 1. √
S. Dixon MacDonald, W. Va., 1. √
George Gones, Red Star, W. Va., 1. √
D. W. Langdon, Turkey, Knob, W. Va., 1. √
S. McDonald, Mt. Carbon, W. Va., 1. √
Evan Powell, Powellton, W. Va., 1. √
Wm. Wyant, Eagle, W. Va., 1. √
Wm. Sharpe, Eagle, W. Va., 1. √

M. T. Davis, Eagle, W. Va., 1. √
Enoch Carver, Edgewater, W. Va., 1. √
W. R. Johnson, Crescent, W. Va., 1. √
J. W. Straughan, Montgomery, W. Va., 1. √
M. T. Davis, Montgomery, W. Va., 1. √
Jno. Carver, Montgomery, W. Va., 1. √
Chas. Trudgen, Montgomery, W. Va., 1. √
J. B. Lewis, Handley, W. Va., 1. √
J. C. Morrison, Crown Hill, W. Va., 1. √
Robt. Ballard, Crown Hill, W. Va., 1. √
Arthur Robinson, Coalburg, W. Va., ? 1. √
S. H. Montgomery, Ronda, W. Va., 1. √
F. L. Garrison, Coalburg, W. Va., 1. √
A. M. Wooldridge, Spring Hill, W. Va., 1. √
C. B. Orcutt, New York, N. Y., 3. √
Newport News, 3. √

State of Virginia,
City of Richmond. } ss.

L. F. Sullivan being duly sworn deposes and says as follows:

That he is the Comptroller of the Chesapeake & Ohio Railway Company, as set out in a previous affidavit made by him and heretofore filed in the case of the Interstate Commerce Commission against the Chesapeake & Ohio Railway Company and the New York, New Haven & Hartford Railroad Company, in the United States Circuit Court at Lynchburg; that the method of keeping the accounts of the C. & O. Ry. Co. for the coal delivered to the New York, New Haven & Hartford Railroad Company, under the contract dated the 3rd day of December, 1896, was as follows: the coal was billed collect at tariff rate from shipping point to the C. & O. Coal Agency Company, New York, up to the 8th day of March, 1899, and thereafter to the C. & O. Coal Agency Company, Newport News, Va. The coal so billed was by said C. & O. Coal Agency Company reconsigned

to the New York, New Haven & Hartford Railroad Company at such point of delivery as was designated by the said New York, New Haven & Hartford Railroad Company, that is to say, New Haven, Providence or Boston, respectively; the amount so billed was charged to the agent at Newport News in his station account; as the vessels were loaded a detailed statement of the coal dumped therein was sent by the agent to the C. & O. Coal Agency Company and a copy was also sent by the agent to the C. & O. Ry. Co., at Richmond, Va.; at the close of each month the agent rendered a summary headed: "Accounts to Auditor for collection," showing thereon number of cargo, date shipped, name of vessel, tonnage, freight and advances to the ship; upon receipt of this statement from the agent at Newport News, after verification, a statement was made up and sent by the C. & O. Ry. Co. to the C. & O. Coal Agency Company detailing the cargoes by numbers shipped to them during the month, on which they inserted opposite each number the approximate net proceeds and returned the same to the C. & O. Ry. Co. This amount was charged on the books of the C. & O. Ry. Co. against the C. & O. Coal Agency Company and the difference between the amount so charged and the amount rendered by the agent at Newport News in his statement of "Accounts to Auditor for collection," was charged on the said books of the C. & O. Ry. Co. to an account headed "Adjustment Account," the same being a fund arbitrarily deducted from time to time from earnings and placed to a credit account to provide for the payment of the loss to the railway company resulting from the performance of the contract with New York, New Haven & Hartford Railroad Company; the sum total of the debit to the C. & O. Coal Agency Company and the "Adjustment Account" was credited to the agent at Newport News in his station account, relieving the agent from the amount charged against him as above set out; accounts of sales were rendered by the C. & O. Coal Agency Company from time to time, as soon as practicable, after delivery of the coal to the New York, New Haven & Hartford Railroad Company, in which accounts were shown the settlements made

by the C. & O. Coal Agency Company with the New York, New Haven & Hartford Railroad Company for the coal, and the charges for the delivery thereof, and also under the head of "Water freight" the loss to the railway company under its tariff rate, which loss was caused partly by the excess cost of the coal beyond the price of seventy cents named in the contract dated December 11, 1896, between J. W. Hopkins, of the first part, the Greenwood Coal and Coke Company, and the Laurel Creek Coal and Coke Company and J. L. Beury, parties of the second part, but principally by the excess cost of the vessel freight beyond the prices of fifty cents and sixty cents, respectively, named in the contract dated December 31, 1897, between the Atlantic Transportation Company and the Chesapeake & Ohio Railway Company; upon receipt of the Accounts of sales above named a final adjustment was made as between the approximations previously stated and the actual figures as shown by the accounts of sales, respectively, the difference being debited or credited to the C. & O. Coal Agency Company or the said "Adjustment Account," as the case might be; the item "Water freight" does not appear on the books of the C. & O. Ry. Co. but the amount thereof is included in the "Adjustment Account" above described.

L. F. Sullivan.

Subscribed and sworn to before me this 28th day of November, 1903.

Given under my hand and official seal the day and year above named.

A. J. T. Trevvett,
Notary Public.

(Seal.)

My commission expires February 18, 1905.

Copy.

Contract made between the Chesapeake & Ohio R'y , Co. of

and The New York, New Haven and Hartford Railroad Company.

Said Chesapeake & Ohio Railway Co for the consideration hereinafter mentioned hereby agrees to furnish to said Railroad Company not to exceed two million gross tons of bituminous coal from its line in such quantities monthly as wanted from July 1, 1897, to July 1st, 1902, without charge for demurrage. Deliveries to be made not exceeding four hundred thousand tons per annum.

And said Chesapeake & Ohio Railway Company further agrees that all said Bituminous Coal shall be of the best quality first-class in every respect, and satisfactory to said Railroad Company and said Railway Company has the right to terminate this contract at any time if said bituminous coal be of poor quality, or if its delivery be unnecessarily delayed.

And said Chesapeake & Ohio Railway Company further agrees to deliver all said bituminous coal to said Railroad Company in its bins at such ports upon its line as required by the monthly requisitions of its Purchasing Agent.

In consideration of the faithful performance by the said Chesapeake & Ohio R'y. Co of all its agreements herein contained, said Railroad Company agrees to pay for said bituminous coal at the rate of two and seventy five one hundredths dollars per gross ton New Haven basis. settlement to be made Monthly

Said Railway Co. has the right to cancel any and all portions of said quantity of bituminous coal remaining undelivered on July 1st, 1902.

~~are not to be responsible for detentions in deliveries occasioned by strikes of their workmen, or destruction of or damage to their works by fire, or the elements, or any cause beyond their control.~~

for value received, hereby guarantee that the Chesapeake & Ohio R'y. Co. shall not fail to deliver coal on account of strikes.

Witness the names of the parties hereto this the Third day of Dec. 1897

(Signed) Chesapeake & Ohio Ry Co

By M Kahn Pres

(Signed) THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

By C E Mellen

Second Vice President

191 And at another day, to wit:

At a term of the circuit court of the United States for the western district of Virginia, continued and held at Lynchburg, on Tuesday, the 1st day of December, A. D. 1903.

Present: Hon. Henry C. McDowell, judge.

Order as to hearing case.

INTERSTATE COMMERCE COMMISSION
vs.
CHESAPEAKE AND OHIO RAILWAY COMPANY et al. } In equity.

This day came the parties by their counsel in this cause, and submitted the same for argument, and having argued the same in part, the case was adjourned over until to-morrow morning at ten o'clock.

And at another day, to wit:

At a term of the circuit court of the United States for the western district of Virginia, given, continued, and held at Lynchburg, on Wednesday, the 2nd day of December, A. D. 1903.

Present: Hon. Henry C. McDowell, judge.

Order as to further hearing of case.

INTERSTATE COMMERCE COMMISSION
vs.
CHESAPEAKE AND OHIO RAILWAY COMPANY et al. } In equity.

This day came again the parties by counsel, and the same having been fully argued, and the court not being fully advised of the judgment to be given in the premises, takes time to consider thereof, and this case is continued.

192 The following fifteen statements of May, 1902, are copies of the accounts of sale made by the Chesapeake and Ohio Coal Agency Company, rendered to the Chesapeake and Ohio Railway Company, for each cargo of coal shipped to the New York, New Haven and Hartford Railroad Company for May, 1902, and illustrate the method of such returns by said Chesapeake and Ohio Coal Agency Company to the Chesapeake and Ohio Railway Company, and the item "A/c water freight"

shows the loss to the Chesapeake and Ohio Railway Company on such coal transportation under its tariff rate as stated in the affidavit of L. F. Sullivan, dated 28th November, 1903.

HARRISON & LONG,
Attys. for C. & O. Ry. Co.
THOS. L. MOORE,
U. S. Atty. for the W. Dist. Va.
DANIEL & HARPER,
Attys. for N. Y., N. H. & H. R. R. Co.

193 Chesapeake & Ohio Coal Agency Co.

Weight per bill of lading, 2,601 tons.
Consignee's weight, 2,601, 2,010/ tons.
Cargo No. 1559.

NEW YORK, *July 22, 1902.*

Account of sale of 2,601 2,010/ tons New River steam coal received May 3rd per bge. "Kentucky" at New Haven, and delivered to New York, New Haven & H. R. R. Co.:

2,601 2,010/ 2.75		$7,155.22	
A/c water frt		1,039.40	
			$8,194.62
Charges:			
Cost, 2,601 tons, .95		$2,470.95	
Vessel frt., 75c	1,951.42		
Less advance	158.11		
		1,793.31	
Dischg., .19		494.36	
Insurance		26.64	
			$4,785.26
Proceeds			$3,409.36
R. R. frt., 2,601 tons, 1.25	$3,251.25		
Advance	158.11		
	3,409.36		
Water frt. A/c	1,039.40		
Proceeds	2,369.96		

CHESAPEAKE & OHIO COAL AGENCY CO.,
Per W. W. WILLETT, *Treasurer.*

Weight per bill of lading, 3,006 tons.
Consignee's weight, 3,006 tons.
Cargo No. 1565.

NEW YORK, *July 22, 1902.*

Account of sale of 3,006 tons New River steam coal received at New Haven, and delivered to New York, New Haven & H. R. R. Co.:

3,006 tons, 2.75		$8,266.50	
A/c water frt		1,203.25	
			$9,469.75
Charges:			
Cost 3,006 tons, .95		2,855.70	
Vessel frt., 75c	2,254.50		
Less adv	184.22		
		2,070.28	
Discharging, .19		571.14	
Insurance		30.91	
			5,528.03
Proceeds			3,941.72
R. R. frt., 3,006 tons, 1.25	$3,757.50		
Advance	184.22		
	3,941.72		
Water frt. A/c	1,203.25		
Proceeds	2,738.47		

CHESAPEAKE & OHIO COAL AGENCY CO.,
Per W. W. WILLETT, *Treasurer.*

195 Chesapeake & Ohio Coal Agency Co.

Weight, per bill of lading, 3,005 tons.
Consignee's weight, 3,005 tons.
Cargo No. 1603.

NEW YORK, *July 22, 1902.*

Account of sale of 3,005 tons New River steam coal received May 15th per bge. "Iowa," at New Haven, and delivered to New York, New Haven & H. R. R. Co.

3,005 tons, 2.75		$8,263.75	
A/c water frt		1,202.74	
			$9,466.49
Charges:			
Cost 3,005 tons, 0.95		2,854.75	
Vessel frt., 0.75	2,253.75		
Less adv.	183.87		
		2,069.88	
Discharging, 0.19		570.95	
Insurance		30.79	
			5,526.37
Proceeds			$3,940.12
R. R. frt., 3,005 tons, 1.25	$3,756.25		
Advance	183.87		
	3,940.12		
Water frt. a/c	1,202.74		
Proceeds	$2,737.38		

CHESAPEAKE & OHIO COAL AGENCY CO.
Per W. W. WILLETT, *Treas.*

196 Chesapeake & Ohio Coal Agency Co.

Weight, per bill of lading, 3,000 tons.
Consignee's weight, 3,000 2,210/ tons.
Cargo No. 1638.

NEW YORK, *July 22, 1902.*

Account of sale of 3,000 2,210/ tons New River steam coal received May 23rd per bge. "Georgia" at New Haven, and delivered to New York, New Haven & H. R. R. Co.

3,000 2,210/ tons, 2.75		$8,252.71
A/c water freight		1,198.95
		$9,451.66
Charges:		
Cost 3,000 tons, 0.95	$2,850.00	
Vessel frt., 0.75	2,250.74	
Less adv	183.31	
	2,067.43	
Discharging, 0.19	570.19	
Insurance	30.73	
		$5,518.35
Proceeds		$3,933.31
R. R. frt., 3,000 tons, 1.25	$3,750.00	
Advance	183.31	
	3,933.31	
Water frt. a/c	1,198.95	
Proceeds	$2,734.36	

CHESAPEAKE & OHIO COAL AGENCY CO.
Per W. W. WILLETT, *Treasurer.*

197 Chesapeake & Ohio Coal Agency Co.

Weight per bill of lading, 2,603 tons.
Consignee's weight, 2,619 1,915/ tons.
Cargo No. 1666.

NEW YORK, *July 22, 1902.*

Account of sale of 2,619 1,915/ tons New River steam coal received May 31st, per bge. "Ocean Belle" at New Haven, and delivered to New York, New Haven & H. R. R. Co.

2,619 1,915/ tons, $2.75		$7,204.60
A/c water freight		1,011.32
		$8,215.92

Charges:

Cost, 2,603 tons, .95		$2,472.85	
Vessel frt., .75	1,964.89		
Less adv	157.71	1,807.18	
Dischg., .19		497.77	
Insurance		26.66	
			$4,804.46
Proceeds			$3,411.46
R. R. frt., 2,603 tons, 1.25	$3,253.75		
Advance	157.71		
	3,411.46		
Water frt. a/c	1,011.32		
Proceeds	$2,400.14		

CHESAPEAKE & OHIO COAL AGENCY CO.
Per W. W. WILLETT, *Treasurer.*

198 Chesapeake & Ohio Coal Agency Co.

Weight per bill of lading, 2,607 tons.
Consignee's weight, 2,607 tons.
Cargo No. 1562.

NEW YORK, *July 22, 1902.*

Account of sale of 2,607 tons New River steam coal received May 5th per bge. "Ocean Belle" at Providence, R. I., and delivered to New York, New Haven & H. R. R. Co.

2,607 tons, 2.81		$7,325.67	
A/c water freight		1,043.44	
			$8,369.11
Charges:			
Cost, 2,607 tons, .95		2,476.65	
Vessel frt., .75	$1,955.25		
Less advance	159.32	1,795.93	
Discharging, .25		651.75	
Insurance		26.71	
			4,951.04
Proceeds			$3,418.07

R. R. frt., 2,607 tons, 1. 25	$3, 258. 75	
Advance	159. 32	
	$3, 418. 07	
Water frt. a/c	1, 043. 44	
Proceeds	$2, 374. 63	

CHESAPEAKE & OHIO COAL AGENCY CO.
Per W. W. WILLETT, *Treasurer.*

199 Chesapeake & Ohio Coal Agency Co.

Weight per bill of lading, 2,999 tons.
Consignee's weight, 2,999 tons.
Cargo No., 1593.

NEW YORK, *July 22, 1902.*

Account of sale of 2,999 tons New River steam coal received May 13th per bge. "Indiana" at Providence, and delivered to New York, New Haven & H. R. R. Co.

2,999 tons, 2.81	$8, 427. 19	
A/c. water frt	1, 200. 32	
		$9, 627. 51
Charges:		
Cost, 2,999 tons, .95	2, 849. 05	
Vessel frt., .75	$2, 249. 25	
Less adv	180. 23	
	2, 069. 02	
Discharging, .25	749. 75	
Insurance	30. 71	
		5, 698. 53
Proceeds		3, 928. 98
R. R. frt., 2,999 tons, 1.25	$3, 748. 75	
Advance	180. 23	
	3, 928. 98	
Water frt. a/c	1, 200. 32	
Proceeds	2, 728. 66	

CHESAPEAKE & OHIO COAL AGENCY CO.,
Per W. W. WILLETT, *Treas.*

200 Chesapeake & Ohio Coal Agency Co.

Weight per bill of lading, 2,441 tons.
Consignee's weight, 2,441 tons.
Cargo No., 1598.

NEW YORK, *July 22, 1902.*

Account of sale of 2,441 tons New River steam coal received May 13th per bge. "San Joaquin" at Providence, R. I., and delivered to New York, New Haven & H. R. R. Co.

2,441 tons, 2.81	$6,859.21	
A/c. water frt	1,180.84	
		$8,040.05
Charges:		
Cost, 2,441 tons, .95	2,318.95	
Vessel frt., .80	1,952.80	
Discharging, .25	610.25	
Insurance	106.80	
		4,988.80
Proceeds		3,051.25

R. R. frt., 2,441 tons, 1.25	$3,051.25
Advance	3,051.25
Water frt. a/c	1,180.84
Proceeds	1,870.41

CHESAPEAKE & OHIO COAL AGENCY CO.,
Per W. W. WILLETT, *Treas.*

201 Chesapeake & Ohio Coal Agency Co.

Weight per bill of lading, 2,302 tons.
Consignee's weight, 2,302 tons.
Cargo No., 1599.

NEW YORK, *July 22, 1902.*

Account of sale of 3,202 tons New River steam coal received May 13th, per bge. "Sovereign of the Seas" at Providence, R. I., and delivered to New York, New Haven & H. R. R. Co.

2,302 tons, 2.81	$6,468.62	
A/c water frt	1,113.59	
		$7,582.21

Charges:		
Cost 2,302 tons, .95		$2,186.90
Vessel frt., .80		1,841.60
Discharging, .25		575.50
Insurance		100.71
		$4,704.71
Proceeds		2,877.50
R. R. frt., 2,302 tons, 1.25	$2,877.50	
Advance	2,877.50	
Water frt., a/c	1,113.59	
Proceeds	1,763.91	

CHESAPEAKE & OHIO COAL AGENCY CO.,
Per W. W. WILLETT, *Treas.*

202 Chesapeake & Ohio Coal Agency Co.

Weight per bill of lading, 2,431 tons.
Consignee's weight, 2,431 tons.
Cargo No., 1604.

NEW YORK, *July 22, 1902.*

Account of sale of 2,431 tons New River steam coal received May 15th, per bge. "G. R. Skolfield" at Providence, R. I., and delivered to New York, New Haven & H. R. R. Co.

2,431 tons, 2.81		$6,831.11
A/c water frt		1,057.06
		$7,888.17
Charges:		
Cost, 2,431 tons, .95		2,309.45
Vessel frt., .75	$1,823.25	
Less adv	148.82	
		1,674.43
Discharging, .25		607.75
Insurance		108.97
		4,700.60
Proceeds		3,187.57
R. R. frt., 2,431 tons, 1.25	$3,038.75	
Advance	148.82	
	3,187.57	
Water frt. a/c	1,057.06	
Proceeds	2,130.51	

CHESAPEAKE & OHIO COAL AGENCY CO.,
Per W. W. WILLETT, *Treas.*

203 Chesapeake & Ohio Coal Agency Co.

Weight per bill of lading, 1,549 tons.
Consignee's weight, 1,549 tons.
Cargo No. 1628.

NEW YORK, *July 22, 1902.*

Account of sale of 1,549 tons New River steam coal received May 22d, per bge. "City of Montreal" at Providence, and delivered to New York, New Haven & H. R. R. Co.

1,549 tons, 2.81	$4,352.69	
A/c water frt	673.53	
		$5,026.22
Charges:		
Cost, 1,549 tons, .95	1,471.55	
Vessel frt., .75	$1,161.75	
Less adv	94.38	
	1,067.37	
Discharging, .25	387.25	
Insurance	69.42	
		2,995.59
Proceeds		$2,030.63
R. R. frt., 1,549 tons, $1.25	$1,936.25	
Advance	94.38	
	2,030.63	
Water frt. %	673.53	
Proceeds	$1,357.10	

CHESAPEAKE & OHIO COAL AGENCY CO.,
Per W. W. WILLETT, *Treas.*

204 Chesapeake & Ohio Coal Agency Co.

Weight per bill of lading, 2,608 tons.
Consignee's weight, 2,608 tons.
Cargo No. 1631.

NEW YORK, *July 22, 1902.*

Account of sale of 2,608 tons New River steam coal received May 22d, per bge. "Kentucky" at Providence, R. I., and delivered to New York, New Haven & H. R. R. Co.

2,608 tons, 2.81	$7,328.48	
A/c water frt	1,043.83	
		$8,372.31

Charges:			
Cost, 2,608 tons, .95		$2,477.60	
Vessel frt., .75	$1,956.00		
Less adv	158.46		
		1,797,54	
Discharging, .25		652.00	
Insurance		26.71	
			$4,953.85
Proceeds			$3,418.46
R. R. frt., 2,608 tons, 1.25	$3,260.00		
Advance	158.46		
	3,418.46		
Water frt. %	1,043,83		
Proceeds	$2,374.63		

CHESAPEAKE & OHIO COAL AGENCY CO.,
Per W. W. WILLETT, *Treas.*

205 Chesapeake & Ohio Coal Agency Co.

Weight per bill of lading, 3,015 tons.
Consignee's weight, 3,015 tons.
Cargo No. 1667.

NEW YORK, *July 22, 1902.*

Account of sale of 3,015 tons New River steam coal received May 31st, per bge. "Ohio," at Providence, and delivered to New York, New Haven & H. R. R. Co.:

3,015 tons, 2.81		$8,472.15	
A/c water frt		1,206.74	
			$9,678.89
Charges:			
Cost, 3,015 tons, .95		2,864.25	
Vessel frt., .75	$2,261.25		
Less adv	183.76		
		2,077.49	
Discharging, .25		753.75	
Insurance		30.89	
			5,726.38
Proceeds			$3,952.51

R. R. frt., 3,015 tons, 1.25		$3,768.75
Advance.....		183.76
		3,952.51
Water frt. %.....		1,206,74
Proceeds.....		$2,745.77

CHESAPEAKE & OHIO COAL AGENCY
Per W. W. WILLETT, *Treas.*

206 Chesapeake & Ohio Coal Agency Co.

Weight per bill of lading, 3,963 tons.
Consignee's weight, 3,963 tons.
Cargo No. 1581.

NEW YORK, *July 22,*

Account of sale of 3,963 tons New River steam coal receiv
10th, per bge. "Harry Luckenbach," at Boston, Mass., and deli
New York, New Haven & H. R. R. Co.:

3,963 tons, 3.01.....		$11,928.63	
A/c water frt		2,179.35	
			$14,
Charges:			
Cost, 3,963 tons, .95.....		3,764.85	
Vessel frt. *frt.*, 85c.....	3,368.55		
Ltg., 30c	1,188.60		
		4,557.15	
Discharging, .20		792.60	
Insurance.....		39.63	
			9,
Proceeds.....			4,
R. R. frt., 3,963 tons, 1.25.....	$4,953.75		
Advance.....			
	4,953.75		
Water frt. %.....	2,179.35		
Proceeds.....	$2,774.40		

CHESAPEAKE & OHIO COAL AGENCY
Per W. W. WILLETT, *Treasurer.*

207 Chesapeake & Ohio Coal Agency Co.

Weight per bill of lading, 1,352 tons.
Consignee's weight, 1,352 tons.
Cargo No. 1669.

NEW YORK, *July 22, 1902.*

Account of sale of 1,352 tons New River steam coal received May 31st, per sch. "A. E. Manson," at Boston, and delivered to New York, New Haven & H. R. R. Co.

1,352 tons, 3.01		$4,069.52	
A/c water freight		418.26	
			$4,487.78
Charges:			
Cost, 1,352 tons, .95		1,284.40	
Vessel frt., .90	$1,216.80		
Less adv	110.48		
		1,106.32	
Dischg., .20		270.40	
Insurance		26.18	
			2,687.30
Proceeds			1,800.48
R. R. frt., 1,352 tons, 1.25	$1,690.00		
Advance	110.48		
	1,800.48		
Water frt. A/c	418.26		
Proceeds	1,382.22		

CHESAPEAKE & OHIO COAL AGENCY CO.
Per W. W. WILLETT, *Treasurer.*

208 *Evidence of E. D. Hotchkiss.*

By Mr. GLASGOW:

If your honor please, the stipulation of counsel in this case provided for affidavits being filed by the defendant and by the petitioner, and that either party should be entitled to cross-examine the affiants, and there is one affidavit which has been filed—it was filed on Saturday afternoon, as I understand—of Mr. E. D. Hotchkiss, general freight agent of the C. & O., and we would like at this time to cross-examine Mr. Hotchkiss.

I understand it is agreeable to the gentlemen on the other side, and if it is agreeable to the court, I would like to cross-examine Mr. Hotchkiss now.

The COURT. Very well.

E. D. HOTCHKISS, being first duly sworn, deposes as follows:

By Mr. GLASGOW:

Q. You are the general freight agent of the C. & O. Ry. Co., I believe?

A. Yes, sir.

Q. And have been since what date?

A. Jany. 1, 1887.

Q. In one of the affidavits which has been filed here, and made by you, you refer to C. & O. Ry. Co. through tariff, through freight tariff No. 5177. I will ask you to take that and look at it—that is a photographic copy of it, as I understand.

Mr. HARRISON. Which affidavit do you refer to?

Mr. GLASGOW. It is referred to in the last affidavit.

Q. That is the through rate sheet of the C. & O., is it; the through freight tariff?

A. I presume this is a copy of the original tariff.

Q. Which is the through tariff?

A. Yes, sir; through tariff.

209 Q. Through tariff from the New River coal field to New York, is it?

A. On its face it is the through coal tariff to New York.

Q. I believe, Mr. Hotchkiss, you say that that tariff which reads "through freight tariff No. 5177, rates of transportation, taking effect April 15th, 1895, by rail to Newport News, Va., thence by ocean and vessels on bituminous coal, wherein carloads—minimum weight, 12 tons—from mines to Newport News, Va., and in cargo quantities, by ocean and vessel from Newport News to destination, subject to ocean contracts and charters as arranged and accepted in advance of shipments from New River district (leaving out the stations) to New York, N. Y., $2.25 per ton 2,240 pounds," that on its face applies to traffic to New York?

A. It reads on its face to New York; it may be applicable to other points, however.

Q. Was that ever filed with the Commission?

A. Yes, sir.

Q. Filed under the act to regulate commerce?

A. According to our records it was filed; yes, sir.

Q. Which requires the through freight tariff to be filed with the Commission—that is the provision under which it was filed, was it?

A. It was filed in accordance with the provisions of law, as I understand it.

Q. And you say that tariff freight rates to New York was applicable to coal to New England?

A. Yes, sir; that is right.

Q. New England was not mentioned in the tariff, was it?

A. Not specifically.

Q. Now, I call your attention to the act to regulate commerce,
210 which provides that it shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time." That applies, Mr. Hotchkiss, to through tariff rates, does it?

A. Yes.

Q. Now, I want you to explain to his honor how a tariff rate, or a tariff sheet, through tariff sheet, on coal from the New River district, on its face to New York, N. Y., of $2.25 a ton, could apply to New England coal?

A. In the first place, I should say it is questionable if the interstate-commerce law has jurisdiction over this particular tariff. I do not understand that the interstate-commerce law exercises control over water carriers, and more particularly the character of water carriers referred to in this tariff, which are sailing vessels, barges, etc. This tariff was made applicable to——

Q. Wait a moment——

Mr. HARRISON. Let him go ahead and finish his answer.

Mr. GLASGOW. Go ahead, then.

A. This tariff applied and was the only tariff applying upon bituminous-coal traffic moving beyond the Virginia capes at the time that this tariff was in effect and during its existence. As such, upon ocean contracts, charters, &c., being arranged, and the one shipper only handling the coal through to Newport News at that time, this tariff could be made and was made applicable to New Haven and other New England ports.

211 Q. Do you mean you collected $2.25 per ton on coal from the New River district to New England under that tariff?

A. I cannot testify as to the collection of the $2.25.

Q. What do you mean by saying "it applied?"

A. I should say that this tariff was applicable, as published, upon coal under those conditions.

Q. Was it applicable on coal going to Charleston, S. C.?

A. I do not know that I could testify as to that.

Q. Was it applicable on coal going to Havana?

A. I do not understand that that question is in this case.

Q. Was it applicable on coal going to European ports?

A. No, sir.

Q. Why should it be applicable any more to New England than to Charleston?

A. Because of the conditions that surrounded the movement of the coal, as stated.

Q. What conditions?

A. The conditions were—the one shipper handling coal from the C. & O. Ry. Co., diverging the coal at its will, in accordance with charters, ocean contracts, &c., arranged prior to the sailing of the coal from Newport News.

Q. That tariff don't say anything about ocean contracts, does it?

A. I think it does.

Q. Yes; I see—subject to ocean contracts. Suppose he wanted to send it to Charleston, would that have applied?

A. I do not understand that Charleston is involved.

Q. We are talking about the tariff now.

A. We are talking about the tariff as it applies.

Q. Would it have applied to all coal going out of the Capes?

A. It applies on coal going beyond the Capes, as indicated, to New York and New England points.

212 Q. Does it indicate New England?

A. No, sir; it indicates Northern ports, but it does not indicate Southern ports.

Q. Suppose it had been going to the Maine coast?

A. It would have been applicable.

Q. It would?

A. Yes, sir.

Q. Would there have been no difference in ocean rates between New England and New York?

A. Possibly.

Q. Would the $2.25 have applied?

A. I should say, yes.

Q. So that, when the interstate-commerce act provides for the filing of through tariff rates, and says that no more shall be charged between points, nor less between points named in such tariff, than specified therein, your idea is that a tariff sheet may be filed to New York, under which you could apply the traffic to anywhere in New England?

A. Under the conditions named on the face of the tariff.

Mr. GLASGOW. That is all I care to ask Mr. Hotchkiss.

Mr. HARRISON. We do not care to ask him any questions.

(Witness stands aside.)

213 *Opinion of the court. Filed February 19, 1904.*

INTERSTATE COMMERCE COMMISSION
vs.
CHESAPEAKE & OHIO RAILWAY COMPANY and The New York, New Haven & Hartford Railroad Company. } In equity.

This case arises from a bill filed by the Interstate Commerce Commission, praying an injunction. In brief, the bill alleges that the Chesapeake & Ohio Railway Company, to be hereinafter styled the C. & O., is carrying and intends to continue to carry coal at less than its published tariff rates for the New York, New Haven & Hartford Railroad Company, and is committing an illegal discrimination in favor of that company. Both defendants have answered, denying any violation of the interstate-commerce act.

On December 3rd, 1896, the following agreement was made. The body of the paper is partly printed and partly typewritten, and in the following copy the typewritten portions are in italics:

"Form E. 27.

Contract made between the *Chesapeake and Ohio Ry. Co.* of ——— ——— and the New York, New Haven and Hartford Railroad Company.

Said *Chesapeake & Ohio Railway Co.* ——— ———, for the consideration hereinafter mentioned, hereby agrees to furnish ——— *to* ——— said railroad company *not to exceed two million gross tons of bituminous coal from its line in such quantities monthly as wanted from July 1, 1897, to July 1st, 1902, without charge for demurrage, deliveries to be made not exceeding four hundred thousand tons per annum.*

And said *Chesapeake & Ohio Railway Company* ——— further agrees that all said *bituminous coal* ——— shall be of the best quality ———, first-class in every respect, and satisfactory to said railroad company, *and said railway company has the right to terminate this contract at any time if said bituminous coal be of poor quality, or if its delivery be unnecessarily delayed* ———.

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And said ——— *Chesapeake & Ohio Railway Company* ——— further agrees to deliver all *said bituminous coal* ——— to said railroad company *in its bins at such ports upon its line as required by the monthly requisitions of its purchasing agent.*

In consideration of the faithful performance by the said *Chesapeake & Ohio Ry. Co.* ——— of all its agreements herein contained, said railroad company agrees to pay for said *bituminous coal* ———, at the rate of *two and seventy-five one-hundredths dollars per gross ton New Haven basis* ———, settlement to be made ——— *monthly.*

Said railway co. has the right to cancel any and all portions of said quantity of bituminous coal remaining undelivered on July 1st, 1902.

Witness the names of the parties hereto this the third day of Dec., 1896.

(Signed) CHESAPEAKE & OHIO RY. CO.,
By M. E. INGALLS, *Pres't.*

(Signed) THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY,
By C. S. MELLEN, *Second Vice-President.*

For value received, I hereby guarantee that the Chesapeake & Ohio Ry. Co. shall not fail to deliver coal on account of strikes.

J. PIERPONT MORGAN."

215 Under this contract the C. & O. delivered between July, 1897, and July, 1902, much the greater part of the two million tons; but at the expiration of the time fixed in the contract, there were still some 59,966 tons not delivered. Owing to a strike of the coal miners of both the New River and Kanawha fields then in force, the C. & O. was unable to supply the shortage, and the New Haven Company purchased the requisite amount where it could, and later presented a bill to the C. & O. of something over $103,000 for the excess of the cost of the coal thus purchased over the price agreed upon in the contract above set out.

In April, 1903, a verbal agreement was made between the two companies to the effect that the C. & O., in lieu of paying this bill of damages, would compromise the claim by delivering the 59,966 tons of coal at the price named in the contract of 1896. At the time of this last agreement the cost of the coal at the mines and the cost of vessel freight, insurance, and discharging were much higher than in 1896. The following table (No. 1) shows the time of shipment, number of tons delivered under this verbal agreement, the cost of the coal at the mines, the water freights, discharging costs, insurance, and the price received for the coal (which is somewhat more than $2.75 per ton, as deliveries were made at ports other than New Haven). During this period the published tariff rate of the C. & O. on such coal was $1.45 per ton from the Kanawha field in West Virginia (where this coal was obtained) to Newport News, Virginia. Table No. 2 shows the loss to the C. & O. on these deliveries of 1903.

216 *Table No. 1.*

Date.	Tons delivered.	Cost at mines.	Water freight.
1903–May	17,627 tons & 2,160 lbs	$22,563.79	$16,429.60
" June	16,141 " & 1,870 "	20,661.48	14,042.01
" July	4,309 " & "	5,515.52	3,878.10
Totals ..	38,078 " & 1,790 "	48,740.79	34,349.71

Table No. 1—Continued.

Date.	Discharging.	Insurance.	Price rec'd.	C. & O. freight, at $1.45.
1903–May	$4,107.66	$176.28	$49,455.04	$25,560.45
" June	3,722.17	161.43	45,224.63	23,405.66
" July	1,077.25	74.35	12,108.29	6,248.05
Totals	8,907.08	412.06	106,787.96	55,214.16

Table No. 2.

Date.	Total costs, exclusive of C. & O. freight.	Total rec'd	Balance.	Loss to C. & O.
1903–May	$43,277.33	$49,455.04	$6,177.71	$19,382.74
" June	38,587.09	45,224.63	6,637.54	16,768.12
" July	10,545.22	12,108.29	1,563.07	4,684.98
Totals	92,409.64	106,787.96	14,378.32	40,835.84

217 Further deliveries were stopped by the service of a temporary injunction issued on the bill in this case.

The published freight rate of the C. & O. on coal per ton from the New River (West Virginia) field, from which field came all the coal delivered prior to 1903, to Newport News, Virginia, destined for points beyond the Capes of Virginia, were, from March 8th, 1899, to January, 1903, as shown by the following table. There is no disagreement as to these rates:

March 8, 1899	.90
May 13, 1899	.80
Jany. 17, 1900	.85
Feby. 1, 1900	1.00
April 2, 1900	1.15
April 1, 1901, to Jany., 1903	1.25

There is a disagreement as to the rates in force from July 1st, 1897, to March 8th, 1899. The complainant contends that the rates applicable to the coal delivered during this period are the local rates—$2 per ton from July, 1897, to January, 1899, and $1.55 per ton during January and February, 1899. The C. & O. contends that it had duly established and in force from July 1st, 1897, until January 2nd,1899, a through rate of $2.25 per ton, of $2 per ton on January 2nd, 1899, and of $1.75 per ton from January 3rd, 1899, until March 8th, 1899. There is evidence that at least one of the through tariff sheets (C. & O. 5,177) is not on the files of the Interstate Commerce Commission; but there is also testimony that this sheet was duly mailed to the then auditor of the Commission. Another objection to this sheet is that it applies, as stated thereon, only to coal destined for New York City. While there is room for doubt as to the proper construction of these through tariffs, it seems to me unnecessary to settle these questions. Conceding, for argument's sake, that the contention of the C. & O. is sound, still the part of
218 the through rate applicable to the C. & O. for carriage from the coal field on the coal in question was the difference between the through rate and the (varying) aggregate of the costs of vessel freight, marine insurance (paid by the C. & O.), and the cost of discharging.

To illustrate:

In July, 1897, the average cost per ton for vessel freight was	.651
Cost of discharging was	.226
Insurance was	.008
Total	.885

As the through rate was $2.25 per ton, it follows that the C. & O. freight rate on such coal for that month was $2.25 minus 0.885¢, or $1.365 per ton.

Now, the cost of the coal per ton was 70¢, and the average price per ton received from the New Haven Co. $2.845.

The cost items, when added, are:

"Water costs," per ton	.885
C. & O. freight	1.365
Cost of coal at mines	.70
Total per ton	$2.95
The selling price being	2.845
The average loss per ton was	.105

As 28,890 tons and 1,140 lbs. of coal were shipped during that month, the actual loss was $3,033.50.

On this basis, upon making the calculation, it appears that there was always a loss to the C. & O. until January, 1899. For January and

February, and from April to and including October, 1899, there was, on the basis most favorable to the defense, a profit. That is, the price received for the coal was in excess of all cost items, including the proper C. &. O. freight charge. Since October, 1899, there has always been a loss. Stopping the account at January 1st, 1903, the losses
219 largely exceed the gains. The following table (No. 3) shows the result of these calculations. I have not taken into account the one day in January, 1899, when the "through rate" was $2.00. There is no evidence of the tonnage of that day, and (as being more favorable to the C. &. O.), I have used $1.75 as the "through rate" for all of the January, 1899, shipments. Moreover, the shipments of this single day would not materially vary the result.

220 *Table No. 3.*

Year.	Month.	Loss.	Profit.
1897	July	$3,033.50	
"	Aug	2,745.73	
"	Sept	2,762.94	
"	Oct	3,223.84	
"	Nov	3,174.39	
"	Dec	4,103.85	
1898	Jan	4,074.44	
"	Feb	6,494.20	
"	Mch	3,468.78	
"	Apr	4,066.98	
"	May	3,796.18	
"	June	4,740.79	
"	July	1,931.05	
"	Aug	2,372.83	
"	Sept	1,602.53	
"	Oct	6,241.19	
"	Nov	2,880.17	
"	Dec	3,020.64	
1899	Jan		$10,564.10
"	Feb		4,176.40
"	Mch	736.78	
"	Apr		2,355.89
"	May		11,133.49
"	June		12,852.02
"	July		16,118.33
"	Aug		7,328.58
"	Sept		5,051.39
"	Oct		3,495.34
"	Nov	6,864.35	
"	Dec	8,631.19	
1900	Jan	6,966.86	
"	Feb	9,223.85	
"	Mch	6,752.49	
"	Apr	9,790.83	
"	May	9,692.80	
"	June	5,679.18	

Table No. 3—Continued.

Year.	Month.	Loss.	Profit.
1900	July	$4,484.43	
"	Aug	3,825.20	
"	Sept	9,514.55	
"	Oct	10,976.07	
"	Nov	5,776.44	
"	Dec	4,580.15	
1901	Jan	6,979.37	
"	Feb	7,904.26	
"	Mch	8,919.80	
"	Apr	7,280.08	
"	May	14,041.55	
"	June	12,448.37	
"	July	12,503.56	
"	Aug	13,994.21	
"	Sept	12,321.14	
"	Oct	15,670.35	
"	Nov	14,655.69	
"	Dec	6,164.61	
1902	Jan	15,796.44	
"	Feb	11,392.78	
"	Mch	13,141.42	
"	Apr	15,072.40	
"	May	16,787.81	
"	June	2,731.63	
		375,034.67	73,075.54
		73,075.54	
	Net loss	301,959.13	

221 In addition to the foregoing loss there is another large loss to be considered. In the answer of the C. & O. (59–60 record) it is said that by reason of nondeliveries in 1900 and 1901 (at which period all deliveries were made at a loss to the C. & O.), the latter became indebted for damages in the sum of $160,000. This damage claim was compromised by the payment to the New Haven Company of $130,000.

It is now necessary to consider and determine two disputed points as to the meaning of the contract above set out. It is remarkable that in this brief contract, involving over five and a half millions of dollars, there are at least two serious mistakes, if the contract be construed as contended for by the defendants. Twice the words "Railway Company" are used where, as is insisted, the words "Railroad Company" were intended. As to the first instance, I am inclined to think that the paper should be construed as contended for by the defendants. The clause in question reads: "And said railway company has the right to terminate this contract at any time if said bituminous coal be of poor quality or if

its delivery be unnecessarily delayed." It does not appear that the legal advisers of either company inspected this paper when it was executed, and this error may have escaped the attention of the laymen who signed it. To read the paper in this respect as written and as contended for by counsel for the Commission would give it an extraordinary effect. It would give the C. & O. the right to terminate the contract if the coal, to be procured by it, should be of "poor quality," or if deliveries, to be made by the C. & O. Railway Company are "unnecessarily delayed." I can not believe that the parties to this paper had in mind deliveries by coal operators to the C. & O. They intended, I think, to refer to deliveries to the New Haven road at its bins at the different ports. It is true
222 that the contract gave the New Haven Company an option as to the amount of coal (not exceeding the stated limit) it might order. But I think this clause was intended to cover the contingency of an order being made by the New Haven Company, and the coal on delivery being of poor quality or the deliveries being unduly delayed.

In the latter disputed clause, the contract as written gives the C. & O. the right to cancel all portions of the quantity remaining undelivered on July 1st, 1902. Mr. D. H. Matson (144–5 record) says in his affidavit that a clause reading "Any portion of this tonnage not shipped by ———, on which date this contract will expire, shall be cancelled," or a clause permitting the seller to cancel all coal not delivered within the period provided for upon certain conditions, has been and is the usual course of business among dealers in coal. The proper construction of this cancellation clause is a matter of some difficulty. The parties to the contract, prior to the institution of this suit, construed it as giving, not the C. & O., but the New Haven Company, the right to cancel. The contract as a whole is, I think, an option on the part of the New Haven Company. But I do not think the intent was to make the cancellation clause read so as to give that company the right to cancel deliveries not made prior to July 1st, 1902. There was no need for such a clause. The paper only obligated the New Haven Company to pay for such coal as it called for, and as was delivered prior to that date. On the other hand, such being the custom in drawing such contracts, I think the intent was, that this clause, standing alone, should be read as it is written. However, this clause must be read in connection with the guarantee. The construction of the two read together seems to me to be that the C. & O. need not deliver any tonnage undelivered prior to July 1st, 1902, unless the failure to deliver arose from strikes. As strikes caused the
223 nondelivery of the entire tonnage prior to July 1st, 1902, I think it proper to construe the contract as the parties construed it, and hold that the cancellation clause did not of itself absolve the C. & O. from the, at least apparent obligation to deliver the balance of the coal.

The next question presented for solution is whether or not the C. & O., in the transactions prior to April, 1903, was the vendor of the coal. It is true that the C. & O. is chartered by Virginia, and that nothing in the Virginia charter to which my attention has been called, and nothing in the later acts of the Virginia legislature cited, authorizes it to become a dealer in coal. Prior to the making of the contract of 1896, the legislature of West Virginia (in which State the C. & O. is understood to do business under legislative license) passed an act (February 15th, 1895) which forbids any railroad company to buy and sell coal and coke, or to lend its credit to anyone engaged in such business (169, record). And in the affidavit of Mr. E. D. Hotchkiss, general manager of the C. & O. (122 et seq., record) he tells us that upon the passage of this act, the C. & O. ceased to "handle" coal (as it had formerly done) through one of its own departments, and that a separate company—the C. & O. Coal Agency Company—in which the C. & O. had no interest, was formed, which became the agent of the coal operators of the New River and Kanawha fields for selling coal destined beyond the capes of Virginia. This company was the sole agent until April, 1900. After this date, several other persons and companies engaged also in this business. These agencies, as Mr. Hotchkiss says, agreed with the coal operators on a price f. o. b. at the mines, arranged for vessels and their freight, and a delivery price of coal in the Eastern market. But in the affidavit of M. E. Ingalls, who was president of the C. & O. until February 1st, 1900 (114, record), we find that "as soon as said contract [of 1896] was made, he, the said M. E. Ingalls, made arrangements with Mr. J. L. Beury, the Greenwood Coal & Coke Company, and the Laurel Creek Coal & Coke Company, whereby the said operators undertook to furnish the coal to supply this contract." The arrangement made with Beury and others is found in the letter of guaranty and the written contract, which are here set out.

224

"Chesapeake & Ohio Railway Co.,
M. E. Ingalls, president.

CINCINNATI, OHIO, *December 11, 1896.*

The GREENWOOD COAL & COKE CO.,
The LAUREL COAL & COKE CO.,
J. L. BEURY, esq.

DEAR SIRS: Referring to a contract executed this day by you, as parties of the second part, with J. W. Hopkins, party of the first part, for the sale of four hundred thousand tons of coal per annum, for five years from the first of next June, for valuable consideration the Chesapeake & Ohio Railway Company hereby guarantees the faithful performance of said contract by said Hopkins.

Yours, truly,

President.

This agreement, made and entered into this eleventh day of December, 1896, by and between J. W. Hopkins, party of the first part, The Greenwood Coal & Coke Company, and The Laurel Creek Coal & Coke Company, corporations chartered under the laws of the State of West Virginia, and doing business in the county of Fayette, West Virginia, and J. L. Beury, parties of the second part:

Witnesseth: The party of the second part hereby agrees to fur-
225 nish, and the party of the first part to take, unless prevented by strikes or other causes beyond their control, 400,000 tons of run-of-mine steam coal, of full commercial quality, each and every twelve months, commencing June first, 1897, and ending July first, 1902.

The party of the first part agrees to pay, and the party of the second part agrees to accept, seventy cents per ton of 2,240 pounds, free on board cars on the line of the Chesapeake & Ohio Railway Company, in full payment therefor; all coal to be delivered over dock to vessels at Newport News each calendar month, to be paid for in cash on or before the twenty-fifth day of the month succeeding.

In case of an advance in the price of mining, the party of the second part shall give notice of such proposed advance to the party of the first part, and if said party of the first part declines to pay such advance, it shall be optional with the party of the first part to terminate this contract.

Second party to be furnished by the party of the first part each and every day cars in sufficient number to take the full portion daily of the 400,000 tons per year; coal delivered by the party of the second part to be open to the inspection of such party or parties as may be appointed by the party of the first part, and if not found to be standard run-of-mine coal, to be subject to rejection. Should either party to this contract make claim of unfair inspection, the matter to be left to arbitration.

The deliveries of coal under this contract are for business outside of any present delivery made over the line of the C. & O. road, and not obtainable at existing prices.

The existing charge of 75 cents per car made by the Chesapeake & Ohio Railway Company for delivery of cars to their main line is to be abolished on coal delivered under this contract.

226 In order to develop the mines sufficiently to produce the requisite 400,000 tons per annum required under this contract, agreement is made to take, commencing with the execution of this contract, all coal possible, and as regularly as may be from the before-mentioned Greenwood and Laurel mines at current prices, until entering upon the performance of this contract.

Payments for coal delivered under this contract are to be made to the legally authorized representatives of the Greenwood Coal & Coke Company and the Laurel Creek Coal & Coke Company.

In witness whereof, the parties hereto and to a duplicate hereof, have hereunto set their names and caused their corporate seals to be hereunto attached the day and year first above written.

(Signed) J. W. HOPKINS.

THE GREENWOOD COAL & COKE COMPANY,
(Signed) By JOSEPH LAWTON, *its President.*

THE LAUREL CREEK COAL & COKE COMPANY,
(Signed) By E. T. ROBINS, *its President.*

(Signed) J. L. BEURY.

Attest:

(Sgd.) J. E. ROBINS, *Sec'y.*
(Sgd.) E. G. RIDDLE, *Sec'y.*

The Mr. Hopkins who signed this contract has given his affidavit. He says (172, record) that he was prior to January, 1899, connected with the "Fuel department of the Chesapeake & Ohio Railway Company;" that from January 1st to about June 1st, 1899, he was general agent of the New River Consolidated Coal Company; and that since June 1st, 1899, he has been the general agent of the C. & O. Coal Agency Company. He further says that he made the contract above set out with Beury et al., "under instructions of M. E. Ingalls, president of
227 the Chesapeake & Ohio Railway Company."

In the testimony of Mr. Stevens before the Commission (14 record) he says that Mr. Ingalls made the contract with the operators to furnish the coal. Again, page 23, during this examination, when the fact appeared that the association of operators—which had assumed the obligations of Beury and his associates—had failed to comply with the contract, both Mr. Stevens and Mr. Wickham, the learned general counsel of the C. & O., expressed the belief that the association could not have been successfully sued for this breach of contract. And the reason seems clearly to be that the West Virginia statute above referred to made the contract with the operators an illegal one. If so, it was because the contract was not with J. W. Hopkins, an individual, as it purports to be, but was in reality with the C. & O.

Therefore, despite the irreconcilable conflict between the statement of Mr. Hotchkiss and those of the other witnesses for the C. & O., it seems to me that in truth the C. & O., in violation of the West Virginia statute of 1895, was the first party to the Beury contract, and that as to the transactions prior to April, 1903, we must treat it as a carrier which purchased coal at mines on its road and delivered it to a purchaser after hauling the coal over its own line and having it carried and discharged by vessels employed by it.

Inasmuch as no action by the court is asked, because of the transactions prior to 1903, the legality of the contract of 1896 is of interest

now, because on its legality depends the validity of the demand made in April, 1903, by the New Haven company that the C. & O. pay the bill of damages of about $103,000. In the answers of both defendants the justice of this demand is asserted. This bill is alleged to be (and
228 I find no evidence to the contrary) the actual difference between the cost of the coal purchased by the New Haven company from others and what would have been the cost to it had the C. & O. fulfilled the contract of 1896. This demand, therefore, cannot properly be considered an unadjusted or vague and unliquidated claim. The inference to be drawn from Goodridge vs. Union Pacific, 37 Fed., 182, and Union Pacific vs. Goodridge, 149 U. S., 690, is that an adjusted claim, if otherwise valid and enforceable, may be paid by a carrier by hauling for such creditor at a reduced rate, the difference between the schedule rate and the agreed rate being applied as a credit on the claim. While these opinions are obiter as to the question which we are now considering, as it did not arise in the above-mentioned case, still it seems to me that this conclusion is sound. Where a carrier owes a legal, enforceable, and ascertained sum of money, I cannot perceive that the commerce act is violated if the debt be paid by carriage done by the carrier for its creditor at the carrier's legal freight rate.

At this point we should determine whether or not the contract of 1896 can be held invalid and the demand arising from its nonfulfillment unenforceable because it was ultra vires. I am now considering the question without regard to the commerce act, and am merely considering the proposition that the charter of the C. & O. gave it no power to become a dealer in coal. As has been frequently said, "The words 'ultra vires' and 'illegality' represent totally different and distinct ideas." (27 Am. & Eng. Ency. (1st ed.), 352 and notes.) While I have not stopped to make a thorough examination of the authorities, my understanding of the law is as follows: For ultra vires acts the sovereignty chartering the corporation may forfeit its charter, and may possibly have such acts enjoined. When a corporation is sued on an ultra vires contract it may usually, but not always, plead ultra
229 vires. A stockholder, or a creditor, of a corporation may have the commission of ultra vires acts enjoined, and may, perhaps, require the corporation to make the defense of ultra vires in some cases. But, so far as I am aware, no third party can be heard to raise this question, unless in some cases where such party is directly injured by the ultra vires act. It is true that the C. & O. is here relying on the obligation of an ultra vires contract. But until some one having the right so to do has the contract of 1896 declared by a court of competent jurisdiction void on the ground of ultra vires, I do not perceive that we have here any right to consider the question. (See 4 Thomp. Corp., 5638; 5 ibid., § 6030, 6032, 6033, 6034.) For reasons of business policy, both the managers of the C. & O. and its stockholders, so far as here appears,

prefer not to raise the question of ultra vires. The State of Virginia has not raised it, and no creditor has raised it. No Federal law has been contravenced by this contract (in so far merely as it is ultra vires), and I do not perceive the right of the Interstate Commerce Commission to raise the question here.

We must now consider the alleged invalidity of the contract of 1896 under the West Virginia statute. As I understand the facts, the C. & O. is a Virginia corporation. It does business in West Virginia under a legislative license, but it is to be here treated as a creature of the Virginia law. The contract does not stipulate that the C. & O. shall go into West Virginia and there buy coal. I say this because, while the contract was to furnish coal from the line of the C. & O., there is no evidence that there is no bituminous coal field on the line of the C. & O. in Virginia. The burden of proof here is on the complainant (Benjamin on Sales (6th ed.) page 509). This court can not take judicial
230 notice of the fact (if it be such) that the only coal fields on the line of the C. & O. are in West Virginia. Moreover, this contract could have been complied with to the letter if the C. & O. had purchased of dealers in Virginia coal that had been mined on its line in West Virginia, and which had been brought into Virginia while the property of the dealers. And, surely, a contract by a Virginia corporation, not made in West Virginia, and not to be performed in that State, can not be held by this court to be in contravention of the West Virginia statute. To so hold would give the West Virginia statute an extra-territorial force which seems to me to be unauthorized. Suppose, for instance, a bank which is authorized by the law of the State chartering it to take real-estate security for loans, also does business in another State which does not authorize the taking of such security. If such bank, in the State which charters it, sues to enforce such a contract, there made, I can not think that the courts of that State would hold the contract illegal because forbidden by the law of the other State. Hence it seems to me that this court can not hold the contract invalid, unless it be because the New Haven company contemplated that the coal was to be purchased by the C. & O. in West Virginia. There are many cases holding that a vendor of articles, which he knows his vendee will use in a manner contrary to law, can recover the contract price of such articles if the vendor did not himself participate in the illegal act. See 27 Am. & Eng. Ency. (1st ed.), page 389 and note; Tracy vs. Talmadge, 14 N. Y., 162, s. c. 67 Am. Dec., 132 and note; 2 Parsons Contracts (7th ed.), bottom page 894. To be sure, the vendee of an article which he knows his vendor intends to procure in violation of law is not in as strong a position as are the vendors in the above cases. Where a vendee contracts to buy that which he knows his vendor is to pro-
231 cure by an act prohibited by law, he is probably to be considered as a sharer in the illegal enterprise as particeps criminis. In

the case at bar, the C. & O. intended to purchase the coal in violation of the statute in question, and did do so. If the New Haven Company knew of this intent there might be room for the contention that this court would, on grounds of public policy, hold the contract of 1896 void. But here again the burden of proof is on the complainant. While I have a strong suspicion that Mr. Mellen knew that Mr. Ingalls intended to purchase the coal in West Virginia, this fact is not proven. And so far as I can say from this record, Mr. Mellen may have supposed that the coal would be mined in Virginia, or at least purchased from coal operators or dealers in Virginia. Where a contract does not require the vendor to do an act prohibited by law in order to obtain the property he is selling, and where the vendee does not know of the illegal intent of the vendor, and especially where the contract could be performed without a violation of the law, it seems to me that this court would not be warranted, were the vendee here suing the vendor for the breach of the contract in allowing the latter to raise the question of illegality. To allow the delinquent to escape the obligation of his contract under such circumstances savors too strongly of allowing a wrong doer to take advantage of his own wrong. If this question could not be raised in this court by the C. & O. itself, when sued on the contract, surely no third party can raise it collaterally.

If my conclusions thus far are sound, we are now brought to consider the validity of the contract of 1896 as affected by the Inter-State Commerce Act. In making this contract, the C. & O. intended to, and did (in so far as it made deliveries prior to 1903) become the purchaser of the coal. We are not at liberty to consider the question of ultra
232 vires, nor are we free to treat the contract of 1896 as illegal on account of the West Virginia statute. If the commerce act was not violated by the transactions prior to April, 1903, then on that date the C. & O. was, so far as this court can say, legally obligated to pay to the New Haven Company the $103,000 claimed as damages for failure to make deliveries.

I understand from counsel that the question now presented has never been adjudicated by any Federal or State court of this country, and owing to the many demands on my time I have not undertaken to make a search of the books. I assume that were there any adjudications, counsel would have found them. There are two rulings of the Inter-State Commerce Commission relied on by the defendants (Haddock vs. Delaware, etc. Co., 4 I. C. C. Repts. 296, and Coxe Bros. vs. Lehigh R. Co., ibid., 535) and another (Grain Rate Case, 7 ibid., 33) relied on by the complainant, which I think are sufficiently unlike the case at bar to deprive them of force. But, if not, these rulings are merely persuasive, and their existence does not relieve me of the duty of reaching my own conclusions.

There is no Federal statute, so far as I know, which in express terms forbids interstate carriers to become dealers in articles of transport. It is, I think properly, admitted by counsel for C. & O. that in case a carrier becomes a dealer for the purpose of giving its purchaser (or any favored person) a rebate, such transaction would be obnoxious to the second section of the act. On this point there is no difference of opinion. And in the case at bar I do not find anything which satisfies me that the C. & O., in making the contract of 1896, had any special design to give a rebate to the New Haven Company, or to any particular coal operators. In other words, I do not find here that the contract of 1896 was intended as a ruse or device to evade the commerce act. The contract was
233 made at a time of extreme financial depression. It appears to have been an entirely honest effort by Mr. Ingalls to find a market for coal produced on his line. The second section of the act is directed only at charging to or receiving from some (directly or indirectly) less than is charged to or received from others for services rendered in transporting passengers or property. To arrive at the true intent of a statute, the reasons inducing to enactment, and especially the evils sought to be remedied, are to be considered. But still an intent can not be found in a statute unless the statute contains apt and sufficient words to express or fairly imply such intent. We are now, therefore (confining ourselves to the second clause for the present), brought to consider this question:

Can an interstate carrier buy and then sell articles, to be carried over its own line, at a price less than the aggregate of the cost and expense items and its own published freight rate? Always excepting cases where such dealings are mere devices to cover an intentional giving of a less rate for carriage to some than to others, it seems to me that this question must be answered in the affirmative in so far as the second section of the act applies.

If in thus dealing in and carrying such article the carrier credits its freight account with the published rate, we can only say that it is carrying for its vendee at a too low rate by saying that a carrier can not suffer, if it wishes or must, a loss as a dealer. Whether it can or not will be considered a little later. If the carrier under such circumstances does not on its books credit its freight account with its published rate, and does not charge the loss to an account kept with the article dealt in, or to income, there would be a seeming violation of the 2nd and 6th sections of the act. But this would be at the utmost a technical
234 violation (if it has a right to suffer a loss as a dealer), and it seems to me that it could with difficulty be considered a violation in any sense. The law is not concerned with the carriers' methods of bookkeeping. Where the dealing is not a device to evade the law, and if a carrier can legally suffer a loss as a dealer, it seems to me a matter of no moment that it go through the form of crediting its full freight earnings

on the transportation account, and charging the loss on the transaction to an account kept with the article dealt in, or to some other account.

Now to recur to the proposition that a carrier acting in good faith can suffer losses as a dealer without violating the second section of the act. Let us suppose that the C. & O. were to make a contract to deliver New River coal to a purchaser in New England at a price which at the time covered the cost of the coal, its own published freight charges, and all water costs. We will also assume, as we are seeking an illustration where the contract is made in perfect good faith, that neither party to the contract has any reason to suppose that the cost of the coal, or the water costs, will, during the life of the contract, advance. With the contract price equal to all cost items and the carrier's full freight rate, I can not perceive any ground for assailing the legality of the contract, or of acts done in performing it. When the cost items increase there is a loss to be suffered by the carrier-vendor. To say that this loss is necessarily a loss on carriage, and hence a rebate on freight rates to the purchaser, seems to me to beg the question. A statute which goes no further than to forbid carrying for one at less than the price charged others is not sufficient warrant for holding that a loss suffered by a carrier-vendor has to be considered as a loss on carriage. If there were a Federal statute
235 forbidding a carrier to become a dealer, or if there were a statute forbidding a carrier-dealer to sell articles of transport at less than the aggregate of all cost items and its own published freight rate, or if there were a statute providing that in such cases all losses must be treated as losses on carriers, the way would be clear. But, with the law as it is, in so far as the second section of the act goes, I fail to find authority for saying that loss under such a contract must necessarily be treated as a loss on carriage. Failing to find, so far, any law forbidding a carrier-dealer to suffer a loss as dealer, we are not always with the unanswerable proposition that the loss under such a contract can just be properly be treated as a loss suffered as dealer as it can as a loss on carriage.

It is true that at the very inception of the contract of 1896, the cost items, and the lowest rate that seems to me possible to be considered as the legal freight rate of the C. & O., were greater than the contract price. But unless this showed the contract to be a device to evade the second section, this fact is to my mind of no importance. If, for instance, a carrier has purchased a large quantity of some article, intending in the future to sell and carry it, and the market price declines, I do not perceive anything in the 2nd section that would prevent the vendor-carrier in such case from suffering a loss on the article.

It is true that where, at the very inception of the contract, there is a loss to the vendor-carrier, it is somewhat difficult to ascribe an intent to lose on the article dealt in, rather than an intent to simply carry at less than the rates given to the public. But in the case at bar, I am unable to find evidence of an intent to carry at less than the published rates of

the C. & O. There is no evidence that, at the time he made the
236 contract of 1896, Mr. Ingalls knew the prices he must pay the coal operators or the water carriers. Both the contract with Beury et el. and that with the water carrier were made after the contract with the New Haven company. When the contract of 1896 was made, Mr. Ingalls may have expected to purchase the coal at so low a price, or to procure water carriage and discharging at so low a price, that the aggregate of cost items and the C. & O. freight rate would have been at least equalled by the contract price to be paid by the New Haven company. And if such be the fact, we have a case of unexpected loss to deal with. But, even assuming that Mr. Ingalls knew the price he must pay for the coal and the water costs, and that he knew that the contract price was not sufficient to pay these costs and the C. & O. published freight rate, still it does not seem to me to necessarily follow that he intended to carry the coal at less than the published rates. To say that it does follow is to say that a vendor-carrier must treat its losses on a contract of sale and carriage as losses as carrier, or as reductions of its freight rate, and can not treat them as losses suffered as a dealer. It is true that the effect to the carrier, to its vandee, and to the public, is exactly the same, whether the transaction be considered as a loss on carriage (and hence a rebate on freight rates) or as a loss suffered on the article dealt in. But this fact does not, as it seems to me, give us a right to say that such losses must be treated as losses or rebates on carriage. In other words, if a carrier may become a dealer, it may suffer losses as a dealer; and if so, except for its bearing on the bona fides of the transaction, these losses may as well be expected and contemplated losses, suffered from the inception of the transaction, as losses arising from unforeseen contingencies. I can readily believe that it was good
237 business policy for a carrier situated as was the C. & O. in 1896, to contract knowingly to suffer a considerable loss on even a very large contract, in order to keep a great number of mines on its line in operation. I can find no evidence in the record which satisfies me that in making the contract of 1896, the C. & O. intended a ruse or device to give a rebate on freight rates to the New Haven company. The 2d section is limited in its application. It can not be declared violated unless the transaction was a ruse or device to carry at less than legal rates, or unless there was, directly or indirectly, a carriage at a too low rate. As before remarked, to say that the losses suffered by the C. & O. must be treated as a carriage at a too low rate is to assert that the honest losses of a vendor-carrier must be treated as reductions in freight rates, and can not be treated as dealer's losses. To so hold is to lose sight of the carrier's relation to the transaction as vendor.

It is further said that in the case at bar, the evidence shows that the C. & O. agent, on receiving payment from the New Haven company, first paid the operators and the water carriers in full, and then turned into

the C. & O. treasury, on account of freight earnings, the insufficient remnant. It is therefore contended that in fact there was in this case an actual rebate on carriage. But it does not seem to me that the result is varied by this fact. Speaking now only of a case in which there has been no intent to violate the 2d section of the act by some device, and of a case in which a carrier-vendor has acted in good faith, it seems to me that the facts above stated make out only a seeming case of violation of the 2d section. The reason for this conclusion is that the law is concerned only with practical results, and is not concerned with the order in which a vendor-carrier pays its honest losses, or with its methods
238 of bookkeeping. If the C. & O. agent had first, out of the receipts from the New Haven company, turned into the C. & O. treasury a sum sufficient to pay the full freight rates, and had then drawn on the C. & O. treasury for funds to make up the sums necessary to pay in full the demands of the coal operators and the water carriers, the practical result, to the vendor-carrier, to its vendee, and to the public, of such procedure, would have been precisely the same as that of the method said to have been actually adopted. To say that the method of handling the receipts constitutes a violation of the 2d section is to say that the law is concerned with mere matters of form, or with the order in which a vendor-carrier pays its losses, although the practical result is the same of that of another order of payment which is not a violation of the 2d section, if the vendor-carrier is not forbidden by the law to suffer honest losses as a dealer. Being unable, therefore, to find in the law anything which forbids a carrier to be a dealer in articles to be carried by it, and also being unable to find anything which forbids it as a dealer to suffer honest losses, I am unable to say that the transactions in question were in violation of the 2d section of the act.

No discussion of the 6th section of the act is necessary. If the transactions prior to 1903 did not violate the 2d section, they did not violate the 6th section.

We come now to a consideration of the 3d section of the act. This section forbids any common carrier, subject to the provisions of the act, to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any
239 particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. It is quite clear that this language is so broad that, by merely becoming a vendor of the articles carried, the carrier does not escape the inhibitions of the 3d section. If any undue advantage is given anyone, or any undue prejudice is caused anyone, by the transactions of a carrier involving

carriage, this statute forbids such transactions. This section is not confined to advantage or prejudice caused by carriage at a rate less than the published rate.

We are now, therefore, brought to consider if the transactions in question, prior to 1903, either gave some one an undue advantage or caused some one an undue prejudice in any respect whatsoever. From the cross-examination of Mr. Hotchkiss it appears that coal "destined beyond the Capes" means coal going to New York or to New England. In the 6th clause of the agreed facts is an admission which seems to be capable of no fair construction other than that some coal from the West Virginia mines went in cargo lots during the period in question to New York or New England consumers other than the New Haven Company. It is possible that such consumers in fact paid no more for the coal than the New Haven Company was paying; but, if so, either some coal operator, or some coal dealer, or some water carrier, suffered a comparative loss. For on all the coal going to other consumers the full published tariff rate of the C. & O. was charged and collected. If the consumers of the coal, other than that going to the New Haven Company, paid as much to the coal producers as the C. & O. paid, and paid as much to the water carriers as the C. & O. paid, and paid full freight rates to the C. & O., it is evident that such consumers had to pay more for their coal than the New Haven Company was paying. If, on the other hand, such
240 consumers paid no more for their coal than the New Haven Company then either some coal producer received less than did the producers of the coal going to the New Haven Company, or some water carrier received less, or some coal dealer suffered the loss. I can not, from the evidence, say just who suffered this comparative prejudice, but it is sufficient if any one did. The 3d section is very comprehensive and broad. A prejudice to any one, in any respect, is forbidden. It is also to be noted that this section is in the disjunctive. It is not necessary to the application of the statute that there be both an advantage to the carrier's vendee and a prejudice to some one else. If either result is caused by the transaction in question, the statute applies. It may be said that, so far as the evidence shows, this other coal may have been sold by the C. & O., and at the same low price as that received from the New Haven Company. But if this be true, the fact was peculiarly within the knowledge of the C. & O. and should have been proved by it. It may further be said that the prejudice here may have been suffered only by some New York or New England consumers, and that there is no evidence that such consumers were competitors of the New Haven Company. But I find no such limitation in the 3d section. Prejudice to any one is forbidden. Moreover, the question of the intent of the parties is not involved. It is generally true, especially as to common-law offences, that there must be both the act and the criminal intent in order to constitute a crime. But where a statute forbids an act to be done, the

offence is committed by doing the act regardless of the intent. So, also, want of knowledge by the purchaser that the carrier's contract is, or has become, illegal is immaterial. The letter of the law and the policy of the law, for the public good, demand that such a contract shall not be performed. I have never heard that the courts can refuse to
241 enforce a law because a party to a contract made in violation of law is ignorant that the law is being violated. It is also to be observed that this section applies as much to an unexpected advantage or prejudice, not contemplated by either party at the inception of the contract, as it does to an advantage given or prejudice caused with clear intent to violate the statute.

Of course, some very slight advantage or prejudice is not forbidden. It must be "undue" or "unreasonable." I am fully convinced that if a carrier-vendor makes a contract such as we have here under consideration at a time when the contract price will pay, or will practically pay, all cost items and the published freight rate of the carrier, such contract does not become illegal if, for reasons beyond the carrier's control, the cost items rise somewhat, if not too much, above the prices prevailing when the contract was made. But the very gist of the case lies in the amount of this increase in the cost items. The standard by which to determine when an advantage to one or a prejudice to some other is undue or unreasonable is not difficult to determine. Whenever it is sufficient in amount to be substantial and of importance to either the one receiving the advantage or to the one suffering the prejudice it must be held to be undue or unreasonable. In the case at bar we should properly consider that the difference between the price received by the C. & O. and the aggregate of cost items and its published freight rates is to be treated as a loss suffered as dealer (but by one required to collect its full freight rates). Upon making the calculation, we find that the loss was $301,959.13 on the actual deliveries made prior to 1903, and that there was a further loss of at least $130,000 because of failure to make deliveries during the period in question. The total loss being $431,959.13, there was an aver-
age loss of over 23 cents per ton on the actual deliveries. I can
242 not escape the conclusion that this advantage to the New Haven Company, or prejudice to some or all of those concerned with the other coal that went to New York or New England from the West Virginia mines, is sufficient in amount to be substantial and of importance.

While a carrier may become a dealer in articles of transport, and can sell (and consequently can contract to sell) such articles at a price which pays, or practically pays, the cost items and its own published freight charges, yet whenever the cost items so substantially rise that the loss to the carrier (as a dealer) and the subsequent advantage to the purchaser-consignee, or the disadvantage to some one else, becomes unreasonable or undue, such sales become (or such contract becomes) illegal. When

such a state of fact comes to exist the carrier must plead the illegality of the transaction and cease to perform.

It is not an answer to the foregoing to say that the losses of a carrier-dealer may be treated as losses on its account as a dealer. If there is a loss (no matter to which of the carrier's accounts it is charged), there is, under evidence such as we have here, either an advantage to the purchaser or a disadvantage to some one else equal to this loss. If we give an ordinary and reasonable meaning to the language of the 3d section of the act, every conceivable case of preference or advantage given by a carrier to one person, or of prejudice caused to be suffered by some one else, is forbidden.

The conclusion I have reached gives a carrier a right to cease to perform contracts made in good faith whenever the cost of the article or the other cost items go to such a point that the contract price does not equal (or practically equal) the cost items and the carrier's published freight rates. This may occasionally result in great hardship to the car-
243 rier's vendee. But the books abound in closely analogous cases, where shippers who obtained by honest mistake on the part of the railroad agents an agreement for carriage at less than schedule rates, have been held without remedy when the carrier refused to abide by the contract and insisted on the full tariff rate. (Chicago R. Co. vs. Hubbell, 38 Pac., 266; Bundick vs. Savannah R. Co., 21 S. E., 995; Missouri R. Co. vs. Bowles, 40 S. W., 899; Houston R. Co. vs. Dumas, 43 W., 609; San Antonio R. Co. vs. Clements, 49 S. W., 913; Missouri R. Co., vs. Stoner, 23 S. W., 1,020; Gulf R. Co. vs. Hefley, 158 U. S., 99; Southern R. Co vs. Harrison, 24 So., 553; Southern R. Co. vs. Wilcox, 99 Va., 394; Bullard vs. N. P. R. Co., 45 Am. & Eng. R. R. Cases, 234.) The interest of the many in having carriers required to observe the provisions of the interstate commerce act, far outweigh the interests of the few who make contracts with carriers which can not be performed except by violating the act.

Having reached the conclusion that there was here an undue preference or an undue prejudice, it follows that the demand made by the New Haven Company in April, 1903, for $103,000 damages for breach of the contract of 1896, was a demand for damages for a failure to perform an illegal contract. The law does not allow damages for a failure or refusal to do an act which the law forbids to be done. The demand of the New Haven road was therefore an illegal and unenforceable demand.

I do not discuss some very interesting questions that might arise under the construction I have given the 3d section of the commerce act. Could a vendor-carrier voluntarily legalize, or be compelled to legalize, performance of a contract of sale and carriage which has become illegal by reason of an advance in cost items by reducing, or being required
244 to reduce, its published freight rates? As the C. & O. has not

offered to do this, and as the New Haven Company has not asked cross-relief, this question is not presented in the case.

Again, could a carrier-vendor render illegal the performance of a contract, which otherwise it could legally perform, by increasing its published freight rate on the article contracted to be carried and sold by it? This question also is not here involved. While reasons occur to me leading to the belief that performance of such contract could neither be legalized nor rendered illegal by the methods suggested, a discussion of these questions would be purely by the way and would unnecessarily add to an opinion which is already of too great length.

In regard to the transactions of 1903, it is unnecessary, so far as we are concerned merely with the commerce act, to determine whether the C. & O. was the vendor of the coal or merely the carrier. If it was the vendor, its acts were illegal for the reasons given above (as it appears, record, p. 33, that the published rate of $1.45 was, in 1903, collected on other Kanawha coal); and if it is to be considered merely as a carrier, its acts were also illegal, for it was carrying the coal at less than its published tariff, and its excuse that in so doing it was merely paying a debt due its creditor, the New Haven Company, cannot avail. This demand is an illegal and unenforceable claim. Under such facts, the case of Union Pacific vs. Goodridge, supra, governs us. However, in view of a possible construction of the 3d clause of the "Elkins Act" (32 Stats., 847), it is necessary to determine whether the C. & O. was the vendor of the coal to be delivered under the verbal agreement of April, 1903, or was merely the carrier thereof. If the C. & O. was merely the carrier, and hence was carrying at less than its published rates, it is contended
245 that the Elkins Act requires that an "omnibus" injunction be issued requiring that the C. & O. observe it published tariffs in respect to all cariage for all persons. If, on the other hand, a mere case of undue advantage or disadvantage, created otherwise than by a rebate on rates, is made out, it is admitted that a mere injunction against the continuance of the particular transaction proved is all that should be awarded.

I have, therefore, carefully considered the record to learn, if possible, the true nature of the verbal agreement of April, 1903. The answers of both the defendants, the testimony of Mr. Stevens before the Commission, and the affidavit of Mr. Hall show, I think, that the C. & O. was in fact the vendor of the coal to be delivered under the verbal agreement. The affidavit of J. R. Thomas might lead to some doubt on this point, except for the explanation of his statement found in the papers above referred to. The C. & O. employed certain agents in the transaction, but in fact and in legal contemplation it was the vendor of the coal. It was simply continuing the performance of the incomplete contract of 1896, delivering Kanawha coal at the former contract price; and the advantage to the New Haven Company, or the prejudice to some one or all the persons concerned with other Kanawha coal was, in 1903, very great

because the C. & O. was receiving for the coal delivered in 1903 more than a dollar per ton less than the aggregate of the cost items and its published freight rate, the loss being over $40,000 on the 38,078 tons delivered in 1903. (See tables 1 and 2, ante.) And it is no avail to ask that we treat this loss as a payment of an indebtedness theretofore incurred. This indebtedness, not being a valid and enforceable claim, can not be treated as if it were such.

246 From what has been said, it follows that it is not necessary to construe the Elkins Act as applicable to a case of carriage at less than published rates. The case at bar is merely one of discrimination brought about by transactions that can not, as I think, be properly treated as a violation of the 2d section of the commerce act, but which must be treated as a violation of the 3d section of that act. The order should, therefore, merely enjoin the further performance of the agreement between the defendants.

HENRY C. McDOWELL,
District Judge.

And at another day, to wit: At a term of the circuit court of the United States for the western district of Virginia, continued and held at Lynchburg, on Friday, the 19th day of February, 1904.

HENRY C. McDOWELL.
District Judge.

Decree perpetuating injunction. Filed February 19, 1904.

INTER-STATE COMMERCE COMMISSION
vs.
C. & O. RWY. CO. & N. Y., N. H. & H. R. R. Co.

This cause having been argued by counsel, and the record and said arguments having been considered, for reasons set out in a written opinion now filed it is adjudged, ordered, and decreed:

(1) That the claim of the New York, New Haven and Hartford Railroad Company against the Chesapeake and Ohio Railway Company for $103,910.69, asserted as damages arising from the partial non-
247 formance by said railway company of the contract of December 3rd, 1896, set out in the record, is, as to the whole of said claim and as to interest thereon, an illegal and unenforceable claim.

(2) That the verbal agreement between said companies, made in April, 1903, and set out in said record, whereby said railway company undertook to furnish to said railroad company 59,966 tons of coal, to be transported from West Virginia to Newport News, Virginia, over the line of said railway company, and thence transported by vessel to certain New England ports, said coal to be delivered at said ports at the price of $2.75 per ton, New Haven basis, is an invalid and illegal agreement.

(3) That the said Chesapeake and Ohio Railway Company, and all its officers, agents, and employees be, and they are hereby perpetually enjoined and restrained from, in any manner, direct or indirect, executing or performing, or attempting to execute or perform, either the said contract of 1896, or said agreement of April, 1903, and from in any manner discharging or satisfying any obligation, or seeming obligation, arising from said agreements, or either of them, or arising from any agreement or arrangement made in lieu of said agreements, or either of them.

(4) That said New York, New Haven and Hartford Railroad Company, and all its officers, agents, and employees be, and they are hereby perpetually restrained and enjoined from demanding, or seeking the enforcement of, in any manner, the payment of all or of any part of its above-mentioned claim of $103,910.69, or of any interest thereon, or from accepting, directly or indirectly, payment or satisfaction in any form of all or any part of said claim, or interest thereon. And they are also enjoined and restrained from enforcing, or attempting to enforce, in any manner whatever, directly or indirectly, the aforesaid verbal
248 agreement of April, 1903, and from accepting, directly or indirectly, any performance, partial or entire, of said agreement, or any payment or other satisfaction either in lieu of performance, or as damages for nonperformance.

(5) That the defendants herein each pay its own costs herein incurred, and that the Chesapeake and Ohio Railway Company pay the costs in this behalf incurred by or for the complainant, the Interstate Commerce Commission.

Enter: Feby. 19, 1904.

HENRY C. McDOWELL,
District Judge.

Supplemental opinion of the court. Filed February 19, 1904.

INTERSTATE COMMERCE COMMISSION
vs.
C. & O. RWY. CO. AND N. Y., N. H. & H. R. CO.

Since the entry of the order of Feby. 19, 1904—the term of court not yet being ended—a motion has been made by the complainant that the injunction be enlarged. Upon argument of this motion, the point principally discussed was the contention by the complainant that the C. & O. was not the vendor of the coal covered by the agreement of April, 1903. I have reexamined the record as to this point, but I am not able to change my opinion on this question. The agreement made in April, 1903, was verbal. Both Messrs. Hall and Stevens agree that the new arrangement was, except that Kanawha coal was substituted for New River coal, that the C. & O. should complete the contract of 1896. That

contract was, as I think, one of sale as well as carriage. In substance and in intent, in making the verbal arrangement of 1903, the
249 C. & O. sold the coal to the New Haven company, delivered at New York and New England ports. The Kanawha Fuel Company had no contract with the New Haven company. The C. & O. Coal Agency Company had no contract with the New Haven company. Both companies contracted with the C. & O. There is not a suggestion in the record that the C. & O. acted as the agent of the New Haven company. As the C. & O. contracted to sell the coal to the New Haven company delivered, and as the New Haven company never authorized the C. & O., as the agent of the New Haven company, to make a contract between the latter and any coal producer, it seems to me that in truth and in legal effect the C. & O. was simply buying the coal from Mr. Thomas' company. The Kanawha Fuel Company certainly agreed to sell coal to some one. A contract to sell of necessity implies a contract by some one to buy. Now, the party who contracted to buy was either the C. & O. or the New Haven company. Since the latter did not directly contract to buy coal from the Kanawha Fuel Company, and did not authorize the C. & O. to act as its agent, it seems to follow that the C. & O. was the purchaser.

The addition to the decree asked for by complainant is that the C. & O. be perpetually enjoined from transporting coal for anyone at less than its established rates. The third section of the Elkins Act, as I read it, does not authorize such an order, except where the court finds that the carrier is violating the law by carrying at less than its published rates. If the discrimination is otherwise caused, the act only authorizes an order requiring a discontinuance of such discrimination.

At this hearing it was argued by counsel for the defense that the court had found the C. & O. guilty of an offense not charged in the
250 petition. It will be found that the petition charges that the C. & O. "is engaged in carrying freight * * * at less than its published rates on file, and is committing a discrimination forbidden by law." Again "Petitioner * * * charges that the Chesapeake and Ohio Railway Company in this transaction is engaged in the carriage of freight * * * at less than its published rates * * * and is committing a discrimination against all other coal produced in the Kanawha district * * * *." As an exhibit with the petition is filed Mr. Stevens' testimony before the Commission, in which he says: "On all coal shipments from the Kanawha district, the rate of $1.45 is being charged and collected * * * *." The 3d section of the commerce act forbids that any "particular description of traffic" be subjected to an undue or unreasonable prejudice or disadvantage. Traffic can be subjected to a disadvantage only when some or all of the persons concerned with such traffic are subjected to disadvantage. If either the producers

of, or the water carriers of, or the consumers of, the Kanawha coal which went to New York or New England for others than the New Haven company, suffered a disadvantage, then this traffic suffered such disadvantage. I am inclined to think that the use of the expression "any particular description of traffic" is sufficient to show that it is not necessary for the complainant either to allege the names of the persons thus prejudiced, or to prove who the particular persons are. Having found that some or all of the persons concerned with the Kanawha coal destined for points "beyond the Capes" other than that for the New Haven company, were subjected to an undue disadvantage, it follows that I have found that this particular traffic has been subjected to such disadvantage. Finding this to be one of the offenses charged in the
251 petition, and finding evidence to sustain the charge, I can not hold that the defendants have been convicted of an offense with which they were not charged or of which they had no notice.

The best conclusion I can reach is that the motion of the complainant to enlarge the injunction should be overruled, and that the decree of Feby. 19, 1904, be allowed to stand in its present form.

March 14, 1904.

HENRY C. MCDOWELL,
District Judge.

And now at this day, to wit: At a term of the circuit court of the United States for the western district of Virginia, continued and held at Lynchburg, on Monday, the 14th day of March, 1904.

HENRY C. MCDOWELL,
District Judge.

Decree overruling motion to enlarge injunction. Filed March 14, 1904.

INTERSTATE COMMERCE COMMISSION
vs.
THE CHESAPEAKE & OHIO RAILWAY COMPANY and the New York, New Haven & Hartford Railroad Company.

This cause coming on again during this, the September, 1903, term, to be heard on a motion by complaint that the order of February, 1904, be enlarged, was argued by counsel. Upon consideration thereof, for reasons stated in a supplemental opinion now filed, it is ordered that said motion be, and it is hereby, overruled, and that the costs accruing on said motion be paid by the complainant.

Enter: March 14, 1904.

HENRY C. MCDOWELL,
District Judge.

252 *Appeal proceedings. Notice of joinder or severance. Filed March 18, 1904.*

The circuit court of the United States for the western district of Virginia.

INTERSTATE COMMERCE COMMISSION, COMPLAINANT,
vs.
CHESAPEAKE & OHIO RAILWAY COMPANY AND NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, defendants. } In equity.

To the Chesapeake & Ohio Railway Company:

You are hereby invited to join with the New York, New Haven & Hartford Railroad Company on or before the 18th day of March next, to prosecute an appeal in the above-entitled cause to the United States Supreme Court to reverse the judgment and decree rendered against us jointly on the nineteenth day of February last, or you will be deemed to have aquiesced in said judgment, and the New York, New Haven & Hartford Railroad Company will prosecute said appeal without joining you as a party.

JOHN W. GRIGGS,
DANIEL & HARPER,
Attorneys of New York, New Haven & Hartford Railroad Company.

Service of the within notice accepted.

CHESAPEAKE & OHIO RAILWAY CO.,
By HARRISON & LONG, *Attorneys.*

MARCH 18TH, 1904.

253 *Petition of appeal. Filed March 18, 1904.*

The circuit court of the United States for the western district of Virginia.

INTERSTATE COMMERCE COMMISSION, COMPLAINANT,
vs.
CHESAPEAKE & OHIO RAILWAY COMPANY, AND NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, defendants. } In equity.

The New York, New Haven & Hartford Railroad Company, one of the defendants in the above-entitled cause, conceiving itself aggrieved by the decree made and entered therein on the nineteenth day of February, one thousand nine hundred and four, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and

prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

JOHN W. GRIGGS,
DANIEL & HARPER,
Attorneys for defendant, New York, New Haven & Hartford Railroad Company.

Dated this —— day of March, 1904.
The foregoing claim of appeal is allowed.
Dated March 18th, 1904.

HENRY C. McDOWELL,
District Judge.

254 *Assignment of errors. Filed March 18, 1904.*

The circuit court of the United States for the western district of Virginia.

INTERSTATE COMMERCE COMMISSION, COMPLAINANT,
vs.
CHESAPEAKE & OHIO RAILWAY COMPANY, AND NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, defendants. } In equity.

The defendant, New York, New Haven & Hartford Railroad Company, prays an appeal from the final decree of this court to the Supreme Court of the United States, and assigns for error:

First. That the said circuit court of the United States for the western district of Virginia erred in adjudging, ordering, and decreeing that the claim of the New York, New Haven & Hartford Railroad Company against the Chesapeake & Ohio Railway Company for $103,910.69, asserted as damages arising from the partial nonperformance by said railway company of the contract of December 3d, 1896, set out in the record, is, as to the whole of said claim, and as to interest thereon, an illegal and unenforceable claim.

Second. That the said court erred in adjudging, ordering, and decreeing that the verbal agreement between said companies, made in April, 1903, and set out in said record, whereby said railway company undertook to furnish to said railroad company 59,966 tons of coal, to be transported from West Virginia to Newport News, Virginia, over the line of said railway company, and thence transported by vessel to certain New
255 England ports, said coal to be delivered at said ports at the price of $2.75 per ton, New Haven basis, is an invalid and illegal agreement.

Third. That the said court erred in adjudging, ordering, and decreeing that the said Chesapeake & Ohio Railway Company, and all its officers,

agents, and employees, be, and they are hereby perpetually enjoined and restrained from in any manner, directly or indirectly, executing or performing, or attempting to execute or perform, either the said contract of 1896, or said agreement of April, 1903, and from in any manner discharging or satisfying any obligation, or seeming obligation, arising from said agreements, or either of them, or arising from any agreement or arrangement made in lieu of said agreements, or either of them.

Fourth. That the said court erred in adjudging, ordering, and decreeing that said New York, New Haven & Hartford Railroad Company, and all its officers, agents, and employees, be, and they are hereby, perpetually restrained and enjoined from demanding, or seeking the enforcement of, in any manner, the payment of all or of any part of its above-mentioned claim of $103,910.69, or of any interest thereon, or from accepting, directly or indirectly, payment or satisfaction in any form of all or any part of said claim, or interest thereon. And they are also enjoined and restrained from enforcing or attempting to enforce, in any manner whatever, directly or indirectly, the aforesaid verbal agreement of April, 1903, and from accepting, directly or indirectly, any performance, partial or entire, of said agreement, or any payment or other satisfaction, either in lieu of performance, or as damages for nonperformance.

Fifth. That the said court erred in not dismissing the complaint of the complainant in said cause.

256 Sixth. That said court erred in holding that the facts proven in said case constituted any violation of the third section of the interstate commerce act.

Seventh. That the interpretation put upon the language of the third section of the interstate commerce act by the said court in its opinion and decree is erroneous and unjust to the said appellant, and the appellant is not in the complaint in this case alleged to have violated the said section or any of the provisions thereof.

Eighth. That the said court erred in holding and deciding that the complaint duly alleged and charged that an offence had been committed by the appellant against the provisions of the third section of the interstate commerce act, and in finding that there was evidence to sustain such charge.

Ninth. That the said decree is in other respects erroneous and unjust to this appellant.

Wherefore the appellant prays that the decree of the said circuit court be reversed.

JOHN W. GRIGGS,
DANIEL & HARPER,
Attorneys for New York, New Haven & Hartford Railroad Company, Appellant.

257 *Order allowing appeal. Filed March 18, 1904.*

In the circuit court of the United States for the western district of Virginia.

INTERSTATE COMMERCE COMMISSION, COMPLAINANT,
vs.
CHESAPEAKE & OHIO RAILWAY COMPANY AND NEW York, New Haven and Hartford Railroad Company, defendants. } In Equity.

Comes now the New York, New Haven and Hartford Railroad Company, one of the defendants in this cause, and files his petition, praying an appeal to the United States Supreme Court from a decree of this court entered herein on the 19th day of February, 1904, and also files his assignment of error.

On consideration whereof, the court doth allow said appeal on the said New York, New Haven and Hartford Railroad Company, or some one for it, executing an appeal bond, with good and sufficient surety, in the sum of five hundred dollars ($500.00).

March 18th, 1904.

HENRY C. McDOWELL,
District Judge.

258 *Appeal bond. Filed March 18, 1904.*

United States circuit court for the western district of Virginia.

INTERSTATE COMMERCE COMMISSION, PETITIONER,
vs.
CHESAPEAKE & OHIO RAILWAY COMPANY AND NEW York, New Haven & Hartford Railroad Company, defendants.

Know all men by these presents: That The American Surety Company, a corporation duly organized and existing under the laws of the United States, and with full power to execute this obligation, is held and firmly bound to the Interstate Commerce Commission in the sum of five hundred dollars ($500) for which payment, well and truly to be made, the said The American Surety Company does hereby bind itself and its successors firmly by these presents.

Whereas in the above-entitled cause a final decree was rendered and entered in said circuit court on the nineteenth day of February, A. D. 1904, in favor of the Interstate Commerce Commission and against the said defendants, and the New York, New Haven & Hartford Railroad Company, one of said defendants, has prayed an appeal therefrom to the Supreme Court of the United States.

Now, therefore, the condition of this obligation is such that if the said defendant, the New York, New Haven & Hartford Railroad Company, shall prosecute its appeal with effect and answer all damages and
259 costs if it fail to make its plea good, then this obligation to be void, otherwise to remain in full force and effect.

In witness whereof the said American Surety Company has caused this obligation to be signed by its vice-president and attested by its attorney in that behalf severally duly authorized, and its corporate seal to be hereto affixed, this sixteenth day of March, A. D. 1904.

[Seal of American Surety Company.] AMERICAN SURETY COMPANY OF NEW YORK,
By DAVID B. SICKELS, *Vice-President.*

Attest:

CORTLANDT S. VAN RENSSELAER,
Attorney.

March 18, 1904.
Approved:

HENRY C. MCDOWELL,
District Judge.

STATE AND COUNTY OF NEW YORK, *ss:*

On this 16th day of March, 1904, before me personally appeared David B. Sickels, vice-president of the American Surety Company of New York, to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York; that he is the vice-president of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said corporation do not
260 exceed its assets, as ascertained in the manner provided by law.

And the said David B. Sickels further said that he was acquainted with Cortlandt S. Van Rensselaer, and knew him to be one of the attorneys of said corporation; that the signature of said Cortlandt S. Van Rensselaer, subscribed to the said instrument, is in the genuine handwriting of the said Cortlandt S. Van Rensselaer, and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said David B. Sickels, vice-president.

[Seal of notary public.] JARED F. HARRISON, Jr.,
Notary Public, New York County.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York held on the 12th day of April, 1893, the following resolution was adopted, and is still in force:

"*Resolved*, That the president and vice-presidents be, and they hereby are and each one of them is, authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for or on behalf of the company in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee, bonds, and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

COUNTY OF NEW YORK, *ss:*

I, Cortlandt S. Van Rensselaer, attorney of the American Surety Company of New York, have compared the foregoing resolution with
261 the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company at the city of New York, this 16th day of March, 1904.

[Seal of American Surety Company.]

CORTLANDT S. VAN RENSSELAER,
Attorney.

Citation. Filed March 18, 1904.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Interstate Commerce Commission, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the circuit court of the United States for the western district of Virginia and filed in the clerk's office in said court on the 18th day of March, A. D. 1904, in a cause wherein the New York, New Haven & Hartford Railroad Company is appellant and you are appellee, to show cause, if any, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 18th day of March, A. D. 1904.

HENRY C. MCDOWELL,
U. S. District Judge, Western District of Va.

Legal service of the above citation is hereby acknowledged.

MARTIN S. DECKER,
Assistant Secretary of the Interstate Commerce Commission.

262 *Stipulation of parties as to transcript of record. Filed April 14, 1904.*

In the United States circuit court for the western district of Virginia.

INTERSTATE COMMERCE COMMISSION
vs.
THE CHESAPEAKE AND OHIO RAILWAY Company, and The New York, New Haven and Hartford Railroad Company.

Stipulation of the parties to appeal as to what shall constitute the record on said appeal.

An order in the above-entitled cause having been entered allowing an appeal to the New York, New Haven and Hartford Railroad Company, and the parties hereto desiring to obviate the expense of a duplication of printing already done in preparing a record for the convenience of the circuit court and the counsel in the cause, it is hereby stipulated and agreed by the New York, New Haven and Hartford Railroad Company and the Interstate Commerce Commission that the clerk of the said circuit court be requested to certify to the Supreme Court of the United States, as a record in this cause, the following:

1. The printed record used in the cause at the hearing.
2. The cross-examination of E. D. Hotchkiss taken before the court on December 1st, 1903.
3. Copies of accounts of sales of coal during May, 1902, rendered by the Chesapeake and Ohio Coal Agency Company to the Chesapeake and Ohio Railway Company.
4. Opinion of Judge McDowell, filed February 19th, 1904.
5. Decree, filed February 19th, 1904.
6. Supplemental opinion of Judge McDowell, filed March 14th, 1904.
7. Decree, filed March 14th, 1904.

263 It is further stipulated and agreed that the clerk of the United States Supreme Court shall be requested, in printing the record for use in his court, to use copies of the printed record in the circuit court as used at the hearing, the same to be furnished him by the New York, New Haven and Hartford Railroad Company.

Witness our hands this the 5th day of April, 1904.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
By DANIEL & HARPER, *Its Attorneys.*
INTERSTATE COMMERCE COMMISSION,
By THOS. L. MOORE, *U. S. Atty.*
WM. A. GLASGOW, Jr., *Special U. S. Attorney.*

Order for transcript of record.

And thereupon, it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereto relating, be transmitted to the Supreme Court of the United States, and the same is transmitted accordingly.

Teste:

WM. MCCAULEY, *Clerk.*

264 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Western district of Virginia, ss:

I, William McCauley, clerk of the circuit court of the United States for the western district of Virginia, at Lynchburg, do hereby certify that the foregoing is a true and complete transcript of the record and proceedings in the cause in the caption mentioned, now of record and on file in my said office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Lynchburg, in said district, this 14th day of April, in the year of our Lord nineteen hundred and four, and in the 128th year of the Independence of the United States of America.

[SEAL.]

WM. MCCAULEY,
Clerk of the Circuit Court of the United States for the Western District of Virginia.

265 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Interstate Commerce Commission, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the circuit court of the United States for the western district of Virginia, and filed in the clerk's office in said court on the 18th day of March, A. D. 1904, in a cause wherein the New York, New Haven & Hartford Railroad Company is appellant and you are appellee, to show cause, if any, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 18th day of March, A. D. 1904.

HENRY C. MCDOWELL,
U. S. District Judge, Western District of Va.

Legal service of the above citation is hereby acknowledged.

MARTIN S. DECKER,
Assistant Secretary of the Interstate Commerce Commission.

266 (Indorsed:) U. S. circuit court, western district of Virginia. Interstate Commerce Commission, petitioner, *vs.* The Chesapeake & Ohio Ry. Co. & The N. Y., N. H. & H. R. R. Co., defendants. Citation on appeal. John W. Griggs, Daniel & Harper, Attys. of N. Y., N. H. & H. R. R. Co. Filed March 18, 1904. Wm. McCauley, clerk. Office of the clerk Supreme Court U. S. Received Apr. 22, 1904.

267 Transcript of Record of appeal proceedings on the petition of the Interstate Commerce Commission for an appeal from decrees entered in the cause in equity lately depending in the circuit court of the United States for the western district of Virginia, at Lynchburg, in which the said Interstate Commerce Commission was complainant, and the Chesapeake and Ohio Railway Company and the New York, New Haven and Hartford Railway Company were defendants.

Petition for appeal. (*Filed April 16, 1904.*)

Circuit court of the United States for the western district of Virginia.

INTERSTATE COMMERCE COMMISSION, COMPLAINANT,
vs.
CHESAPEAKE & OHIO RAILWAY COMPANY AND NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, defendants. } In equity.

The Interstate Commerce Commission, complainant in the above-styled cause, conceiving itself aggrieved by the decree made and entered therein on the 19th day of February, one thousand nine hundred and four, and also by the decree entered therein on the 14 day of March, one thousand nine hundred and four, does hereby appeal from said order and decrees to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is herewith filed, and prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated,
268 may be sent to the Supreme Court of the United States.

For the Interstate Commerce Commission:

THOS. L. MOORE,
United States Atty.
and WM. A. GLASGOW, Jr.,
Special Assistant Atty.

Dated this 15 day of April, 1904.

The foregoing claim of appeal is allowed.
Dated April 16, 1904.

HENRY C. McDOWELL,
District Judge.

269 *Assignment of errors.* (*Filed April 16, 1904.*)

Circuit court of the United States for the western district of Virginia.

INTERSTATE COMMERCE COMMISSION, PLAINTIFF,
vs.
CHESAPEAKE & OHIO RAILWAY COMPANY AND New York, New Haven & Hartford Railroad Company, defendants. } In equity.

The plaintiff, the Interstate Commerce Commission, prays an appeal from the final decrees of this court, entered in the above-styled cause on the 19th day of February, 1904, and the 14 day of March, 1904, to the Supreme Court of the United States, and assigns for error:

1. That the circuit court of the U. S. for the western district of Virginia, after finding that the claim of the New York, N. H. & H. R. R. Co. against the C. & O. Ry. Co. for $103,910.69, asserted as damages arising from a partial nonperformance by said railway company of a contract of December 3rd, 1896, set out in the record, is, as to the whole of said claim and interest thereon, an illegal and unenforceable claim, and after finding that the verbal agreement between said companies, made in April, 1903, and set out in said record, whereby said railway company undertook to furnish to said railroad company 59,966 tons of coal, to be transported from West Virginia to Newport News, Virginia, over the lines of said railway company, and thence transported by vessels to certain New England ports, said coal to be delivered at said ports at the
270 price of $2.75 per ton, New Haven basis, to be an invalid and illegal agreement; that said court merely enjoined and restrained the said C. & O. Ry. Co., its officers, agents, and employés from, in any manner, direct or indirect, executing or performing or attempting to execute or perform either said contract of December 3, 1896, or said agreement of April, 1903, and from in any manner discharging or satisfying any obligation or seeming obligation arising from said agreements or either of them, or arising from any arrangement or agreement made in lieu of said agreements, or either of them; whereas said court should have further enjoined and restrained the C. & O. Ry. Co. from giving to said railroad company, or to any other person, firm, or company, any undue or unreasonable advantage or preference, and should further have restrained and enjoined the C. & O. Ry. Co. from transporting coal from one State to or through any other State for the New York, New Haven & Hartford

Railroad Company, or for any firm, person, or company, at a less rate than the duly established freight rate of the said railway company in force at the time, and from further failing to observe its published tariffs, or from giving to the said N. Y., N. H. & H. R. R. Co., or to any person, firm, or company, in any manner whatsoever, any undue or unreasonable preference or advantage, and said decree entered by the court on the 19th day of February, 1904, in addition to the provisions thereof, should have enjoined and restrained the N. Y., N. H. & H. R. R. Co. and its officers and agents from seeking or accepting in any manner any direct or indirect rebate of the duly established freight rates of the C. & O. Ry. Co. on any interstate commerce, and from seeking or accepting in any manner from said railway company any undue or unreasonable preference or advantage.

2. And whereas on the 4th day of March, 1904, the complainant,
271 the Interstate Commerce Commission, moved the said court to amend the order entered in the above cause on the 19th day of Feby., 1904, by inserting the following paragraph:

And the defendant, the C. & O. Ry. Co., is restrained and enjoined from transporting coal from one State to, into, or through any other State for the N. Y., N. H. & H. R. R. Co., or for any other person, firm, company, or corporation, at a less rate than the duly established freight rate of the said C. & O. Ry. Co., in force at the time, and filed with the Interstate Commerce Commission.

And whereas, the court, by order, entered herein on the 14 day of March, 1904, overruled the complainant's motion, and declined to change or amend the order entered herein as aforesaid on the 19th day of February, 1904, it is assigned as error that the said modification of the order of the 19th of Feby., 1904, should have been made by the court herein.

3. It is further assigned as error that the court found that the loss made by the C. & O. Ry. Co. from July 1st, 1897, to July 1st, 1902, in the transportation of the coal in the record set forth, by the C. & O. Ry. Co., for the N. Y., N. H. & H. R. R. Co., was a loss by the C. & O. Ry. Co. as a vendor of coal; whereas the court should have held that such loss occurred by reason of the C. & O. Ry. Co., charging to the N. Y., N. H. & H. R. R. Co., or to the shipper of said coal, less than the published tariff rates of the C. & O. Ry. Co. within and during said period, in force and duly filed as required by law.

4. That the court held that the loss by the C. & O. Ry. Co. in the transportation of coal for the N. Y., N. H. & H. R. R. Co., after April 1st, 1903, was a loss to the C. & O. Ry. Co. as vendor of said coal, whereas the court should have held that the loss to the C. & O. Ry. Co. was really a cut or rebate or departure from its established tariffs of
272 rates on coal, in effect during said period.

5. The court should have held that the contract between the C. & O. Ry. Co. and the N. Y., N. H. & H. R. R. Co. of December 3,

1896, was absolutely void and illegal, being in violation of the act to regulate commerce, and for failure to deliver coal thereunder, it should have been held that no liability could be successfully asserted against the C. & O. Ry. Co.

6. The court should have held that no legitimate claim for damages could be asserted against the C. & O. Ry. Co. for failure to deliver coal under the contract of Dec. 3, 1896, and that said contract was not binding on the said C. & O. Ry. Co.

7. The court should have held that the contract of Dec. 3, 1896, between the C. & O. Ry. Co. and the N. Y., N. H. & H. R. R. Co. was an option to the N. Y., N. H. & H. R. R. Co., to take within five years, any amount of coal which it may want, not to exceed two millions of tons, and not exceeding 400,000 tons per annum, and the court should have held further that the C. & O. Ry. Co. had the option on July 1, 1902, to cancel all portions of said quantity of coal remaining undelivered.

8. The court should have held that the C. & O. Ry. Co. was guilty of discrimination as defined in sec. 2 of the act to regulate commerce, in the carriage and delivery of the coal to the New York, New Haven & Hartford Railroad Company.

9. The court should have held that the C. & O. Ry. Co. violated the provisions of the act of Congress approved Feb. 19, 1903, in that it was engaged in the carriage of freight traffic between given points at less than its published rates on file, and that said railway company was committing a discrimination forbidden by law, and the court should have entered such an order as would have enforced, on the part of the
273 C. & O. Ry. Co., an observance of its published tariffs, and should have directed and required of the C. & O. Ry. Co. a discontinuance of such discrimination; and the court should have made said order apply to the C. & O. Ry. Co. and to the N. Y., N. H. & H. R. R. Co., the latter being the party interested in the traffic.

Wherefore the plaintiff prays that the decree of the said circuit court in declining to amend said decree be reversed, and that the decree of Feby. 19, 1904, be amended and be made to conform to such an order as the circuit court aforesaid should have entered.

THOS. L. MOORE,
U. S. Attorney.

WM. A. GLASGOW, JR.,
Special Assistant Attorney for Plaintiff.

274 *Order allowing appeal.* (*Filed April 16, 1904.*)

In the circuit court of the United States for the western district of Virginia.

INTERSTATE COMMERCE COMMISSION, complainant,
vs.
CHESAPEAKE & OHIO RAILWAY COMPANY and New York, New Haven & Hartford Railroad Company, defendants. } In equity.

Comes now the Interstate Commerce Commission, complainant in the above cause, and files its petition, praying an appeal to the United States Supreme Court from decrees of this court entered herein on the 19th day of February, 1904, and 14 day of March, 1904, and also files its assignment of errors.

On consideration whereof, the court doth allow the said appeal.

HENRY C. MCDOWELL,
District Judge.

APRIL 16TH, 1904.

275 *Stipulation as to record.* (*Filed April 30, 1904.*)

In the circuit court of the United States for the western district of Virginia.

INTERSTATE COMMERCE COMMISSION
vs.
CHESAPEAKE & OHIO RAILWAY COMPANY and New York, New Haven & Hartford Railroad Co.

Stipulation of the parties on appeal.

It is agreed, on the part of the Chesapeake & Ohio Railway Company and the New York, New Haven & Hartford Railroad Company, that on the appeal of the Interstate Commerce Commission in the above styled cause, the same record in the Supreme Court of the United States may be used as is used on the appeal of the New York, New Haven & Hartford Railroad Company, with such additional papers as may have been filed on the appeal of the Interstate Commerce Commission.

April 26, 1904.

CHESAPEAKE & OHIO RAILWAY COMPANY,
By HARRISON & LONG, *Attorneys.*

NEW YORK, NEW HAVEN & HARTFORD R. R. CO.,
By DANIEL & HARPER, *Attorneys.*

INTERSTATE COMMERCE COMMISSION,
By WM. A. GLASGOW, JR., *Attorney.*

276 UNITED STATES OF AMERICA, *to wit:*

The President of the United States to Chesapeake & Ohio Railway Company & New York, New Haven & Hartford Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the city of Washington within thirty days from the date of this writ, pursuant to an appeal duly allowed in the circuit court of the United States for the western district of Virginia, and filed in the clerk's office of said court on the 16" day of April, A. D. 1904, in a cause wherein the Interstate Commerce Commission is appellant and you are the appellees, to show cause, if any, why the decree rendered against said appellant, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, this 16th day of April, A. D. nineteen hundred and four.

HENRY C. MCDOWELL,
District Judge.

(Indorsed:) Interstate Commerce Commission vs. C. & O. R'way Co. et al. Citation on appeal. April 16, 1904, filed. W. M. Manzy, D. C.

277 UNITED STATES OF AMERICA, *to wit:*

The President of the United States to Chesapeake & Ohio Railway Company & New York, New Haven & Hartford Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the city of Washington within thirty days from the date of this writ, pursuant to an appeal duly allowed in the circuit court of the United States for the western district of Virginia, and filed in the clerk's office of said court on the 16" day of April, 1904, in a cause wherein the Interstate Commerce Commission is appellant and you are the appellees, to show cause, if any, why the decree rendered against said appellant, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, this 16th day of April, A. D. nineteen hundred and four.

[SEAL.]

HENRY C. MCDOWELL,
District Judge.

A copy: Teste.

WM. MCCAULEY, *Clerk.*

Service of the above citation is hereby acknowledged.
April 19th, 1904.

NEW YORK, NEW HAVEN & HARTFORD R. R. Co.,
By DANIEL & HARPER, *Attys.*
CHESAPEAKE & OHIO RY. Co.,
By HARRISON & LONG, *Attys.*

(Indorsed:) Original. U. S. Cir. Ct. W. D. Va., Lynchburg. Interstate Commerce Commission vs. C. & O. Rway. Co. et al. Citation on appeal.

278 *Order for transcript of record.*

And thereupon it is ordered by the court here that a transcript of the record and proceedings, on the appeal of the Interstate Commerce Commission, in the cause aforesaid, together with all things thereto relating, be transmitted to the Supreme Court of the United States, and the same is transmitted accordingly.

Teste:

WM. MCCAULEY, *Clerk.*

Clerk's certificate.

UNITED STATES OF AMERICA,
Western district of Virginia, ss:

I, William McCauley, clerk of the circuit court of the United States for the western district of Virginia, do hereby certify that the foregoing is a true and complete transcript of the record relating to the appeal proceedings on the petition of the Interstate Commerce Commission for an appeal from decrees entered in the cause and the caption mentioned, now of record and on file in my said office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Lynchburg, in said district, this 10th day of May, in the year of our Lord 1904, and in the 128th year of the Independence of the United States of America.

[SEAL.]

WM. MCCAULEY,
Clerk of the Circuit Court of the United States for the Western District of Virginia.

(Indorsement on cover:) File No., 19347. Western Virginia C. C. U. S. Term No., 254. The New York, New Haven and Hartford Railroad Company, appellant, vs. The Interstate Commerce Commission. Filed May 13, 1904. File No., 19358. Term No., 260. The Interstate Commerce Commission, appellant, vs. The Chesapeake and Ohio Railway Company & The New York, New Haven & Hartford Railroad Company. Filed May 16", 1904. File Nos., 19347 and 19358.

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